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JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
HISTORICAL AND POLITICAL SCIENCE  
HERBERT B. ADAMS, Editor

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History is past Politics and Politics are present History.—*Freeman*

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VOLUME XVI

Anglo-American Relations  
and  
Southern History

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THE JOHNS HOPKINS PRESS  
1898

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The

Neutrality of the American Lakes

AND

Anglo-American Relations





SERIES XVI

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The  
Neutrality of the American Lakes  
AND  
Anglo-American Relations

BY

JAMES MORTON CALLAHAN, PH. D.

*Sometime Assistant and Fellow in History, Johns Hopkins University*

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THE JOHNS HOPKINS PRESS, BALTIMORE

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1898

To  
PROFESSOR HERBERT B. ADAMS  
Who encouraged this study



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## PREFACE.

In May, 1895, I was led to begin this study of the "Neutrality of the American Lakes" by a letter of Honorable Edward Atkinson to President Daniel C. Gilman, of Johns Hopkins University, in which the subject was proposed for investigation, and by a subsequent letter from Mr. Atkinson, in which he referred to it as "one of the most suggestive events in our history." In order to obtain whatever has any bearing upon the subject and its connection with Anglo-American relations, I have carefully examined a large amount of material. Most of my work has been done at the Department of State and in the libraries of Washington, D. C., Buffalo, N. Y., Detroit, Mich., and Toronto, Canada.

The principal sources of the material upon which the study is based are: (1) The correspondence in the Bureau of Archives and Indexes at the Department of State; this includes "Notes" to and from the British Legation at Washington, "Instructions" to the American Legation at London, "Despatches" from the American Legation at London, "Domestic" and "Miscellaneous" letters, and Consular Reports; (2) The manuscript letters of Jefferson, Madison and Monroe in the Bureau of Rolls and Library; (3) Correspondence in the Record Office at London; (4) J. Q. Adams' "Memoirs" and "Castlereagh's Correspondence;" (5) Reports of Canadian Archives; (6) American State Papers; (7) Government Documents; (8) Reports of debates in Congress; (9) Parliamentary debates; (10) American and Canadian newspapers and pamphlets, and the London Times. Information has also been gathered from correspondence and talks with people along the lakes and from interviews with officials in the War, Navy, and Treasury Departments.

For valuable suggestions or information my thanks are due to Professor H. B. Adams, of Johns Hopkins Univer-

*Preface.*

sity; Hon. J. W. Foster, ex-Secretary of State; Mr. Alvey A. Adee, Assistant Secretary of State; Mr. Hubert Hall, of the Record Office, London; Hon. F. W. Seward, formerly Assistant Secretary of State; Mr. B. F. Stevens, of London; Professor H. P. Judson, of the University of Chicago; Mr. James Bain, Jr., Chief Librarian of the Toronto Public Library; Professor Goldwin Smith, of Toronto; ex-Congressman Geo. E. Adams, of Chicago; Governor H. S. Pinckney, of Michigan; Mr. J. N. Larned, of the Buffalo Public Library; Miss Mary Hawley, of the Buffalo Historical Library; Mr. Silas Farmer, of Detroit, Mich.; Mr. W. L. McCormick, of the Marine Record, Cleveland, Ohio; the mayors of various lake cities, and others. I especially desire to acknowledge the courtesies extended by Mr. Andrew H. Allen, Chief of the Bureau of Rolls and Library, Mr. S. M. Hamilton, Custodian of Archives, and Mr. Pendleton King, Chief of the Bureau of Archives and Indexes, in rendering materials accessible and in furnishing facilities for furthering my researches at the Department of State. The officials of the Foreign Office and Record Office at London have also assisted me in securing extracts from correspondence which could not be obtained at Washington.

J. M. CALLAHAN.

*Johns Hopkins University,*  
Baltimore, December, 1897.



# The Neutrality of the American Lakes and Anglo-American Relations.

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## I.

### INTRODUCTION.

#### THE AMERICAN PEACE POLICY.

The majestic St. Lawrence—bearing its waters over rapids, by the sides of a thousand islands, and finally into the Atlantic—drains a system of lakes which has been a great determining factor in American history. Originally a barrier between Indian tribes, it later became a door to the interior of a vast continent, a highway for trade, and a boundary between two civilized nations. Along the shores of these lakes, the savagery of a new world met the civilization of an old one, struggled for a time to maintain itself, then retreated before the ever-advancing frontier of the Anglo-Saxon. Here, two powerful European peoples, hostile by long tradition, struggled for supremacy. The final conflict, which began near the present site of Pittsburg, decided that the English should occupy the land and that the French could not hold it vacant. Scarcely had the echoes of the victory of Wolfe over Montcalm at Quebec died away when the first sounds of the American Revolution came to be heard. The Anglo-Saxon had not won for England alone. A new star was about to appear in the galaxy of nations. The liberty-loving colonists who were battling with the forests and making a new life south of the lakes claimed the right to govern themselves in their new home. After eight years of opposition, England consented in 1783, and the United States began its career, with the lakes as its northern boundary. The young nation stood upon its feet,

growing strong in power and resources, putting down insurrections and receiving respect abroad; but England continued to hold the lake posts till 1796, and the British traders proposed to push the United States boundary to the south of the lakes. American rights in the Northwest and on the Great Lakes were not entirely assured until they were emphasized by fleets and diplomacy in the War of 1812.

With the close of that war came the almost universal desire for peace. In England, a few wanted to send Wellington to America to direct a continuation of the war. In America, a few favored the conquest of Canada. But the thinking people received the news of peace with gladness. Jefferson wrote that Quebec and Halifax would have been taken, but that peace and reconciliation were better than conquest by war. It was a time for repression of passion rather than for the perpetuation of hatred. Jefferson's advice concerning the "inscription for the Capitol which the British burnt" was that it "should be brief and so no passion can be imputed to it." The same spirit is seen in measures advocated by Madison and Monroe.

The leaders of the hour were men who had no interest to gain at the expense of public peace. They endeavored to cultivate an intelligent public sentiment. The elements which entered into their public actions will bear the close scrutiny of their critics. They consulted only the interests of the country and of humanity, and gave intelligent guidance to the fundamental good sense of the people.

By the Treaty of Ghent, concluded amidst the festivities of Christmas Eve in 1814, the lake boundary and the Northwest were secured to the United States, and the gates of the temple of Janus were closed, leaving two kindred peoples to live under separate governments on opposite sides of the lakes. But continued peace could not be *guaranteed* by proclamation. There was no great danger of a collision directly with the powers across the Atlantic; for after the downfall of Napoleon, when Europe was mourning for her children, and when nature and art had been blighted and defaced by war,

there was a reaction against the idea of future hostilities. But with rival navies, recently built upon the lakes, there was danger of future collisions in that quarter which might also endanger our peace with England.

While Jefferson was trying to "eradicate the war feeling which the newspapers had nourished," the authorities at Washington applied their minds to secure effective arrangements which would lessen the possible sources of future misunderstanding and accelerate the return of fraternal feeling and action. They saw that if the peace was merely to lead to a perpetual race in naval construction such a peace would only be temporary and expensive. This led to earnest solicitation, by the United States, to secure disarmament.

During the war each party had struggled to secure the control of the lakes. In the negotiations for peace the British proposed that they should have military control of these waters, and thus prevent the expense of rival armaments. This proposition of a "one-sided" disarmament probably suggested to the United States commissioners the idea of making it mutual; but their instructions at that time did not permit them to make such an offer, as past conditions had made it appear necessary for the United States to keep a superiority of naval forces on the lakes. After the peace, however, it was clear that mutual disarmament was the only assurance against collision and continued sources of misunderstanding.

A study of the diplomacy by which this was secured, its immediate wholesome effect, together with the later international relations and diplomatic questions that have influenced the pulse of public sentiment and are in any way connected with the subsequent history of that subject, cannot be otherwise than useful to a nation that seeks to know itself in order to govern itself through reliable leaders.

In accordance with instructions from the United States Government, John Quincy Adams proposed to Lord Castlereagh, at London, in January, 1816, that some measure of this kind should be accepted by both governments, in order

to avert the threatened evil of rival naval forces upon the lakes. Castlereagh received the proposition in a friendly spirit, but was inclined to be cautious. After fiery speeches in Parliament, the British ministry at last decided to meet the proposition "so far as to avoid anything like a contention between the two parties." Since Mr. Adams had been given no instructions as to the precise nature of the proposed arrangement, Lord Castlereagh, on April 23, 1816, instructed Mr. Bagot at Washington "to take *ad referendum* any such proposal as the American Secretary of State might make."

During the spring and summer of 1816 Mr. Monroe was anxious that the question of naval forces should be settled before all others. The action of British officers in boarding American vessels made it the foremost question, and President Madison favored a "clean sweep" of *all* warlike vessels, even down to revenue cutters. But Mr. Bagot could not be rushed. He finally decided to open negotiations, and on August 2 Mr. Monroe submitted to him the "precise project." This provided for limiting the force on the lakes to one vessel on Lake Champlain, one on Lake Ontario, and two on the upper lakes, each of 100 tons burden, and with one eighteen-pound cannon. This force was to be restricted in its duty to the protection of the revenue laws, the transportation of troops and goods, and such other services as would not interfere with the armed vessels of the other party. Mr. Bagot avoided discussions upon the terms proposed, but he suspected that the United States had some secret object in making the restrictions upon the vessels to be retained. He could not conclude a definite arrangement until he had submitted the matter to his government, but was willing to give effect to a mutual suspension of construction (except where it was necessary to complete vessels already begun).

When Mr. Bagot's letter reached England the cabinet was scattered, and it was not until January, 1817, that Castlereagh replied that they were ready to accede to the propositions of Monroe. The delays, surprises and uncertainties in



the negotiations led Mr. Adams to fear (in November) that the Americans were simply being amused, and he did not like to be made a fool. But the growing promptness of the British Government had already become apparent in the orders which were sent out to repress the conduct of British officers on the lakes.

The reciprocal and definite reduction of these forces did not occur until next year, and after Monroe had become President. It was then completed by the exchange of notes between Mr. Bagot and Mr. Rush, who was acting as Secretary of State until Mr. Adams should arrive from London. This agreement became effective at once, though there is no evidence that Great Britain gave to it the formalities of a treaty.<sup>1</sup> It was not till a year later, April, 1818, that Monroe formally notified the Senate of the arrangement, and obtained its approval and consent, after which it was declared by the President's proclamation to be in full force.

It provided that all naval vessels, except the four allowed by the agreement (with restricted duties), should be forthwith dismantled, and that no other vessels of war should be built or armed upon the lakes; but it was also provided that either party could abrogate the agreement by giving six months' notice.

The arrangement made no provision in regard to revenue vessels, but both parties now seem to consider that these are not a part of the navy and are not included under the limitations of the agreement. The original intention of President Madison was to reduce cutters to the "minimum of size and force, if allowed at all." In 1857 and 1858 the British Government evidently considered that revenue cutters came within the limitations of the agreement. In 1864 Mr. Seward was "not prepared to acknowledge that it was the purpose of the agreement to restrict the armament or tonnage of vessels designed exclusively for the revenue service." In 1865,

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<sup>1</sup> In 1864-5 both Seward and Palmerston spoke of the arrangement as an "informal" one.

however, Mr. Seward, in reply to a note from the British minister concerning such vessels, stated that "their armament, if any, will not be allowed to exceed the limit stipulated in the conventional arrangements."

Questions have arisen at different times as to whether the agreement applies to all of the Great Lakes. In 1864 the Assistant Secretary of the Treasury was not sure that it included Lake Erie as one of the "upper lakes." When the military canal from the Mississippi to Lake Michigan was proposed to Congress during the Civil War there was some doubt whether this lake came under the provisions of the agreement of 1817. The agreement has not only been treated as applying to all these lakes, but it would probably also be interpreted as applicable to all the streams which flow into the various lakes included in its provisions.

By the construction which has been placed upon the clause "no other vessels of war shall there be *built or armed*," the Navy Department has refused to accept the bids of lake builders for naval vessels which were to be built for use on the ocean. These bids could have been accepted under the liberal interpretation that a hull would not be a war vessel until after she had received her armor and guns, but it has not been thought best to give this interpretation. It appears probable that the Navy Department may have been guided in its action chiefly by the fact that the vessels after being built would have to pass through a long stretch of exclusively Canadian waters in order to get them to the sea. Permission has been readily obtained at various times to take vessels through these waters, but it has probably been considered a bad policy to ask such a favor of a neighboring nation.

It was the impossibility of getting the vessels from the lakes to the sea that made it necessary to dismantle them there. The United States had begun to reduce the expense of her fleet soon after the peace, either by dismantling or sinking her vessels. Thus had perished the fleet of the gallant Perry. It had been built for a purpose. It had served that purpose. Why should society be burdened with the

expense of keeping it longer? It had been the servant of the people. Why should the people now become servants of the fleet? On Lake Champlain all vessels had already been laid up at White Hall. On Lake Ontario there was a large number of vessels, but most of them had been laid up or dismantled. Work had been suspended upon the large ship *New Orleans* of seventy-four guns. The work of dismantling or sinking was now continued. Soon, only the pieces of hulks were left as a reminder of the former warring fleets. The forces on each side declined to "almost complete disappearance." By 1825 public vessels had practically disappeared, both parties even disregarding the maintenance of the force which had been allowed by the agreement. Peace existed in fact as well as in theory.

In 1837, during the internal troubles in upper Canada, there were American sympathizers for the insurgent cause, whose indiscreet action threatened for awhile to endanger the international peace. At Buffalo, mendacious speeches were made, and a few persons joined the rebels at Navy Island. The *Caroline*, owned by American citizens, and engaged to carry supplies to the insurgents on the island, was captured by a party of Canadians and burned. Sentiment and excitement were aroused. The United States Government took steps to preserve the neutrality, but for awhile there was an increase of sympathy for the insurgents, some of whom found refuge south of the lakes. Border feeling was aggravated by other controversies, and each side began to inquire into the expediency of preparing an armed force for the lakes. The British at first hired some steamers on the lakes, but later they informed the United States Government that on account of threatened invasion they found it necessary to equip temporarily a larger force than was authorized by the Agreement of 1817. No objection was made, but the continued reports of British defenses on the lakes attracted the attention of Congress, and in 1841 resulted in an appropriation for armed vessels on the lakes. Our relations with Canada, a subject of intense solicitude

at this time, in a few months became much more satisfactory. The British force was soon reduced to the limit. Nevertheless, the United States vessel, the *Michigan*, which had been provided for by the appropriation of 1841, was placed on Lake Erie in 1843. Her size and armament were in excess of the stipulations of 1817, and this fact drew a remonstrance from the British minister, but it was urged that changes from sail to steam vessels since 1817 justified a revision of the agreement in regard to the size of vessels.

After the brief bluster over the Oregon question there was no further occasion for strained relations, and the growth of cordial feeling, though not entirely uninterrupted, continued until the period of the Civil War. For many years the *Michigan* was the only public vessel in use upon the lakes.

Anglo-American relations, which before 1861 had grown to be so friendly, were severely strained by several events growing out of the Civil War. England feared that her American possessions were in danger from the growing power of the United States. The United States felt that England favored the Southern Confederacy. Each began to consider the defense of the lake frontier. England sent troops to Canada in June, 1861, as "a mere precaution." She also objected to the United States steamer *Michigan* as being larger than the limit of 1817 for lake vessels. The *Trent* affair brought a decrease of Union sentiment in Canada. England discovered that this province was indefensible against the United States, but committees in Congress recommended shore defenses and naval depots for the lakes. The deflection of Western commerce from the Mississippi to the East, together with the tangled relations with England, led to petitions for canals to connect the lakes with the Mississippi and the Hudson, so that there could be a procession of ironclads to the lakes if occasion demanded.

From the latter part of 1863 till the close of the war the Confederate agents in Canada threatened to break the peace on the northern frontier. The Canadian authorities did not neglect their duty, but it was felt that they should have a



more effective system of repression. There were no British naval vessels on the lakes. The United States felt the need of a larger naval force for protection in that quarter. Matters were complicated by the Canadian canal policy, which was not considered liberal enough to justify the United States in continuing the Reciprocity Treaty. In May, 1864, a member in Congress said he favored making a clean sweep of all treaties.

The crisis came in September, 1864, when Confederate passengers captured a steamer and unfurled the Confederate flag upon the lakes. Their plot to strike a blow at Northern cities failed, but this attempt, together with the attack upon St. Albans, Vt., in October, and the various rumors which followed, kept the people in a state of unhealthy excitement and gave the Fenians a hope for an invasion of Canada.

When Congress met, five new revenue cutters were ordered for the lakes. The Reciprocity Treaty and the Agreement of 1817 were soon abrogated. Passports were required for travelers from Canada. Chandler wanted to send troops to the frontier.

But war was averted. England began to act more promptly, and Canada passed a more effective law for stopping Confederate raids. The utterances of Fenians and demagogues gave England some fear that Canada would be in danger at the close of the American war, and led to debates on the defenses for the lakes. Each government, however, used its influence to counteract the effect of the erroneous ideas which had found permanent record on the printed page in both countries.

It was several years after the close of the Civil War before the questions which it engendered were adjusted. Various new questions also have arisen from time to time and have been the source of more or less irritation. Fenians have threatened to carry the green flag into Canada; tariffs have ruffled the feelings of people on the border; the fisheries question has been a source of friction, and canal tolls have led to controversy and retaliatory laws. The clash of inter-

ests and the parade of words have at times produced various psychological changes in the popular sentiment, but there has been no desire by either party to create a system of rival defenses on the lakes. For some time after the Fenian invasion of 1866 it appears that some steamers were chartered by the Canadian Government and fitted up as temporary gunboats for service on the St. Lawrence and the lakes, to prevent further attempts at invasion. The *Michigan* and a revenue cutter were sent by the American Government to patrol the Niagara river for awhile in 1866. Care was taken by the United States authorities to prevent further invasions, but it was not apprehended that any other vessels would be necessary. It seems that all the lake revenue cutters belonging to the United States were laid up in 1867. They were still laid up in 1870 when it was reported that there were plans for an invasion of Canada. The *Michigan* was kept ready for service on Lake Erie, but no invasion occurred in that quarter. There was an attempted invasion from Vermont during the summer of 1870, but it was frustrated.

The *Michigan* has continued to cruise the upper lakes since that time. In 1878, Secretary Thompson, of the Navy, suggested the advisability of selling her and applying the proceeds on a new vessel for special purposes, but Congress did not act on the recommendation. In 1890, various memorials and petitions, especially from Chicago, asked that this antiquated vessel should be replaced by a modern one that would not excite the ridicule of foreign visitors to the World's Fair; but these memorials were left to sleep in the basement of the Capitol, and there was placed on exhibition at Jackson Park only a brick model of a ship of war.<sup>1</sup>

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<sup>1</sup>After the World's Fair this brick model was turned over to the State of Illinois, and was occupied by the Naval Militia of the State. It was their headquarters during the strike of 1894, when they patrolled the harbor in boats, in order to protect the water cribs, which it was feared the strikers might attempt to destroy in order to cut off the water supply of the city.

There has been some doubt as to whether the arrangement has been in existence since 1865, from the fact that in February of that year Congress ratified a notice for its termination, which had been given some time before by the Secretary of State. This notice was afterward withdrawn through the Department of State, but without any action on the part of Congress. Secretary Thompson, of the Navy, in 1878 said that "whether the arrangement remains in force since 1865 must rest upon the decision of Congress." The State Department has considered it as still in force. Congress would probably do the same. In 1892 there were very few members in Congress who would have voted for its abrogation.

The fact that the Navy Department will not permit ocean vessels to be built by lake builders has been the source of some complaint in recent years. In 1895, when the Detroit Dry Dock Company failed to get the contract to build gunboats, for which it had made the lowest bid, there was a general howl from the newspapers for the abrogation of the agreement. An appeal was made to President Cleveland, but he decided that no naval vessels could be built on the lakes. An attempt was made in 1895, before Congress met in December, to get an expression of public sentiment in favor of the abrogation of the Agreement of 1817, but it was unsuccessful. It was considered better to encourage peace than to encourage the war-ship industry on the lakes.

This friendly convention of 1817, which had the effect practically of abolishing rival navies upon the great highway to the Northwest, is a departure from many of the old and musty maxims of diplomacy. But it is in harmony with the new spirit of the new times. There are many precedents for the neutralization of a zone along a land boundary, and several instances of guaranteed neutrality of small States or territories,<sup>1</sup> but there is no precise precedent for the Agreement

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<sup>1</sup> Examples are : Switzerland, Belgium, Luxemburg, Cracow, and the Ionian Islands.

of 1817.<sup>1</sup> In fact, the same geographical and political conditions that obtain in regard to the Great Lakes do not exist elsewhere. No other great lakes have formed a boundary between great States. The nearest approach is Lake Geneva and the Caspian sea. The Crimean war resulted in the neutralization of the Black sea.<sup>2</sup> Similar conditions may at some future time exist on Lake Victoria Nyanza, in Africa.

Edward Atkinson, of Boston, says of this arrangement that it is "the greatest step in progress toward the maintenance of peace, and without precedent in history." Although it was secured by the earnest solicitation of the United States Government, it has proven to be equally satisfactory to the British. Mr. Cobden, who once sat on the Naval Committee in Parliament, said in 1850, that "from the moment of the existence of that treaty both parties have totally disregarded the maintenance of the force altogether, and there is not at the present time more than one crazy English hulk on all these lakes." Mr. Walsh, in a speech in the House of Commons, February 10, spoke of the arrangement as a "treaty which had been in force for half a century," and stated that "to it must be attributed the peace and tranquillity which during that period has existed between the two countries." The London Times, of the same year, spoke of the Agreement of 1817 between the two great kindred communities as far in advance of the spirit of that age, and added that "no wiser act was ever agreed upon between two nations than the limitation of the naval force on the lakes." The sentiment seems almost unanimous that from the standpoint of international relations the effect of the agreement has been

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<sup>1</sup>A convention between England and France, in January, 1787, provided that the augmentation of naval armaments should be mutually discontinued.

<sup>2</sup>In several cases it has been proposed to extend the principle of neutralization to rivers and canals bordering on the territory of several states. The Rhine was neutralized in 1815. The Clayton-Bulwer Convention, in 1850, guaranteed the neutrality of the proposed Central American Canal.



entirely wholesome. In February, 1865, Mr. C. F. Adams, the United States Minister at London, in a conversation with Lord Russell, said that armaments are expensive and useless, serving in troubled times to breed mutual suspicion. He saw no reason why we should not continue the "full reliance" of half a century under the Agreement of 1817, which had been so "highly useful." The Canadians are also satisfied with the treaty. James Bain, Jr., Chief Librarian at Toronto, states that "the agreement has worked so admirably that it seems folly to dream of reviving the rivalry of the olden times."

The fathers "builded even better than they knew." The growth of the Northwest and the friendly intermingling of the two peoples has exceeded their greatest hopes. The cities gathered around this Western Mediterranean in size and industry far excel all expectations. Consider the magnitude of the commerce of the Great Lakes. In 1894 the freight borne upon their waters during 234 days exceeded 30,000,000 tons. This is one-fourth as much as the total freight carried by all the railroads of the United States during the whole year. On June 30, 1894, there were upon the lakes 1731 steam vessels, 1139 sailing vessels, 386 canal boats and 85 barges—a total of 3341 craft, with a gross tonnage of 1,227,400 tons. Half of the best steamship tonnage in the United States is owned on the lakes. The freight which passed through the St. Mary's Falls Canal in 1893 exceeded by 3,137,504 tons the entire tonnage of all the world that passed through the Suez Canal in that year. The tonnage which passed through the Detroit river during 234 days in 1889 was nearly two and one-half million tons more than the entire tonnage which entered and cleared at London and Liverpool for that whole year in the foreign and coastwise trade. All this vast commerce, under the Monroe policy of disarmament, is said to be as well protected by "mutual reliance" as it would be if millions of the people's earnings were expended upon naval armaments and forts. Such Monroe doctrine needs no better test to recommend it. During periods of great bitterness,

when the lakes might have swarmed with gunboats, it has warded off the storms which were liable to follow rapid changes of the national temperature. This true Americanism of Monroe is in strict conformity with the foreign policy of all our earlier Presidents. It is the spirit which animated Washington to write in his Farewell Address, "Observe good faith and justice toward all nations; cultivate peace and harmony with all." It seeks peace with honor, and does not advocate the Donnybrook Fair principle in diplomacy, that if a foreign nation's head is visible we should hit it.

It is generally conceded that the experience of the past justifies the continuance of the agreement, though, of course, subject to such modifications as might be necessary to meet modern conditions. There is no desire to depart from the spirit and principle for which the agreement stands. As our modern civilization gets farther away from malignant prejudice and bluster we are less inclined to waste strength in threatening and offensive "defenses." Time has shown that there is little danger from Canada. England has long since conceded the point held by Mr. Madison, that Canada would be of no advantage to her in case of war, and has admitted that she cannot compete with the United States in constructing gunboats on the lakes, even though the Welland canal should give her a temporary advantage in case of possible future hostilities. The Chicago canal, made navigable for gunboats from the Mississippi, would be analagous to the St. Lawrence and Welland canals, but England would still have the advantage in shortness of water route in case she kept gunboats in the vicinity of the St. Lawrence. In other respects the United States would have the advantage.

Nearly eighty years have passed away since the agreement was signed. The Northwest has changed from a wilderness to great and prosperous States. Great cities along the lakes have sprung up and become the rivals of the capitals of Europe. Empires have risen and fallen, great battles have been fought, and boundary lines of nations swept from the world. But during this time, notwithstanding occasional waves of

jingoism on both sides of the fresh-water sea, the people have been attracted more and more to each other, and the sharpness of border lines has been softened by the courtesy and good-will which govern the social and business relations of the two countries. The old border feeling has lost its intensity in old Canada, and in Manitoba it does not exist. Whether Canada shall continue the connection with England, or shall desire to work out her destiny as an independent nation, the United States has no designs against her peace and prosperity. Our sympathies will continue to have more in common than in opposition. The people from different sides of the lakes have no quarrel over the past when they meet at summer resorts. Uncontrollable and unreasonable sentiment has sometimes asserted itself in a hostile manner, but friendly feelings have continued to subsist in spite of commercial and national differences. The jingoism of those who are always making mental preparations for war has forced itself into notoriety at times, but it is on the wane. Artificial attempts to resurrect the prejudices of earlier days only serve as an object-lesson of the earlier stages of civilization, which modern society has not yet entirely laid aside.

The mental coolness which once existed between the peoples separated by the lakes has abated. The ancient passion has died away, and the only coolness that now normally exists is the coolness of the fresh waters themselves which separate the territories, but are, at the same time, serving as a highway of trade and social commingling to *unite* the nations in a brotherhood of common feeling.

The policy of the two great English-speaking peoples in regard to the American lake boundary, to which has been attributed the peace that has continued to exist in spite of disputes, is a precedent worthy of the study of other nations. Overgrown standing armies and floating navies are often a source as well as a product of war. Mr. Freeman called them "the modern abomination." An armed peace not only frowns defiance, but its expense inflicts upon nations the curse of poverty. Some preparation for war, with the least

possible sacrifice of the advantages of peace, seems necessary, but it is plainly an unnecessary waste of force and a hard burden for society when one-fifth of the flower of Christian Europe is set aside to make ready for war. It would be far better to depend more upon the militia. In 1850, Sir Robert Peel said: "We should best consult the true interests of the country by husbanding our resources in a time of peace, and, instead of lavish expenditure on all the means of defense, by placing some trust in the latent and dormant energies of the nation." In the same year Cobden said: "Four million of men, the flower of Europe, . . . are under arms, living in idleness. . . . The women are doing farm work in order that the muscle and strength of the country should be clothed in military coats and should carry muskets on their shoulders." Here is a double loss to society. These several million men have to be supported by those who are in the industrial pursuits. If the army were swept away by a plague it would only be a single loss. If both army and those who work to support it were swept away society would be none the worse, from a material point of view.

Besides the cost, the whole moral tendency of vast "peace establishments" is bad. If a man walks abroad armed to the teeth he is very liable to get into a quarrel; so with a nation. Social manners have been benefited by a general disarmament of individuals. So the public tone might be benefited by the disbanding of overgrown armies and the employment of navies in peaceful commerce. The maxim, "In time of peace prepare for war," is transmitted from distant ages, when brute force was the general law. It is a dogma of barbarism, which the searchlight of modern civilization has not yet entirely illumined. But we are learning by experience that peace begets peace, while growls beget growls, and menace begets menace. We can say as Mr. Disraeli did in 1859: "Let us terminate this disastrous system of rival expenditure, and mutually agree, with no hypocrisy, but in a manner and under circumstances which can admit of no doubt—by a reduction of armaments—that peace is really our policy."



Before our country had evolved to a "more perfect union," the Articles of Confederation provided that disputes between States should be determined by commissioners selected by the disputants, or by Congress. This was better than for each State to have kept a large army and navy. If nations do not find it expedient to bind themselves to a policy like this, reduction of armaments must nevertheless become more and more the world's policy. Through the ages we have learned to lessen both the occasions and the severities of war. It has been a gradual movement; but the current of history cannot be reversed. The shadow cannot be made to go back on the dial. A sentiment in favor of *reduction* of armaments has been gradually developing. If England and the United States could disarm upon the lakes after the War of 1812, and if four European nations could make similar provisions, after the Crimean war, respecting armaments upon the Black sea, is it not possible in time of peace to apply the principles of these treaties on a larger scale and provide for a general disarmament in Europe? The political and economic effect could not ultimately be otherwise than good. Professor Von Holst says that the European nations will be *forced* to abandon their expensive armaments in order to keep up with the progress which the United States is making without them.

The intellects and hearts of the nations are outgrowing the theory that national disputes can only be settled by the sword. The result of the Geneva arbitration has shown that they *can* be settled otherwise. The law of hate is yielding to the law of love. Every year makes it more apparent among nations that the best interests of all will be served, not by mutual antagonism, but by co-operation and mutual service. The discoveries of the past have gradually revealed the limitlessness of the world's resources, and demonstrated that all the nations are parts of "one body," and that the foot cannot say to the hand, "I have no need of thee." This is the lesson of modern commerce. Civilization is the accumulated labor of all the world through mutual service and concord, as well



as the result of struggling interests and passions. The animosities between the various early races in England and between the various provinces in France have died out. The new wine of national life long since broke the old bottles of the feudal system and it passed away. So the broad spirit of the new age is leading men to let their love for mankind extend farther than the few hills or the little water that happens to lie between the tribes of one great family of people. We can love humanity more without loving home and country less. No set of men should get the idea that the world was made for their special benefit.

The new epoch is here. Each generation profits by the reservoired results of past centuries. Unconquerable time works on unceasingly. There is no rest. What has been, does not always have to be. Past experience is adjusted to the needs of the present and future. Slowly but surely the nations are being brought nearer to one another. The progress of one reacts for good upon the other. A solidarity of commercial interests has been created. Thought has been made virtually omnipresent. Submarine telegraphs obviate much bitterness by the prompt contradiction of false reports. Travel has made men more tolerant. The hindrances and barriers that lay between nations are disappearing. Industrial and intellectual and social threads, stronger than the mere paragraphs of treaties, connect all men. No changed condition upon any part of the periphery, but it affects all ganglia which regulate national life. No nation lives to itself. More and more the members of the European family of nations are coming to a clear understanding among themselves and about themselves. As they become more and more conscious of their world relations, we can look to the changed spirit of the age rather than to any mechanical device for the maintenance of peace. There will be a victory of the peace-makers over the war-makers. Progress will be more and more accompanied by the absence of duplicity and Machiavellianism in diplomacy, by the "mutual reliance" of neighboring nations, and by the principles of justice and right.

## II.

### THE NORTHERN LAKE BOUNDARY OF A NEW AMERICAN NATION.

#### CONDITIONS WHICH LED TO THE TREATY OF 1783.

Some part of the inland waterways which stretch along our northern border was the scene of warlike movement from a time previous to the first discovery of Lake Champlain till the close of the War of 1812.

Champlain found the Hurons fighting the Iroquois. His injudicious interference in their quarrels served afterwards as a factor in extending English influence toward the Great Lakes, and induced the French to push their discoveries along the western part of these waters and into the country drained by the Mississippi and its branches. The French thus obtained control of the fur trade of the upper lake region. But the Iroquois found it profitable to carry beavers of the Northwest to the English at Albany. So they determined to wage war against the Indian tribes of the upper lakes, to seize Mackinaw, and to drive away the French, in order to get this trade into their hands.<sup>1</sup> But their attempt was unsuccessful. The English, too, had begun to establish posts in the Northwest in the region of Mackinaw, and it became evident to the French that the Iroquois were the mere agents of the English. English traders were passing back and forth between Albany and Lake Ontario, and their trade with the Iroquois was increasing. The French in Canada saw that in order to retain a monopoly of the fur trade they must destroy the source of supply to the Iroquois. Thus grew up the question of whether France or England should

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<sup>1</sup> Winsor : Narrative and Critical History, Vol. 4.

control the lakes and the Northwest, and the conflict between the Indian tribes was transferred to two great nations.<sup>1</sup>

Soon after the colonization movement west of the mountains began, the English were thrown into contact with the French in the region between the Ohio river, the Mississippi river and the Great Lakes. The contemplation of future possibilities was awakening the consciousness of the English people as to the importance of this region and of the Great Lakes. The French had the advantage of first settlement, but Anglo-Saxon determination was invincible in the establishment of new homes beyond the mountain barriers. The last great conflict between France and England in America was at hand. It was a final struggle for supremacy on the new continent. Many of the scenes of that war were upon the lakes. They were found important in war as well as in peace. It was by descending the St. Lawrence from Lake Ontario in 1760 that Amherst rendered it impossible for the French to retire westward from Montreal, and to prolong the war on the shores of the lakes.<sup>2</sup> Securing control of the lakes was a vast step toward the realization of the victory by which England was given control of all the territory west of the Mississippi and north of the Great Lakes.

But England achieved the conquest of the Ohio valley not for herself. She was simply the trustee through whom it was transferred "from the France of the Middle Ages" to the free people who were making for humanity a new life in America. It was for the liberty-loving colonist that it had been won. He had battled with the forest, and won it for the masses of

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<sup>1</sup> In the debates of the Congress, at Albany, in 1754, it was held that the country of the five cantons of the Iroquois was acknowledged by the treaty of Utrecht to be under the dominion of Great Britain, that Lake Champlain, . . . Lake Ontario, Lake Erie, and all the countries adjacent had been admitted by all to belong to the Five Nations, and that the whole of those countries long before the treaty of Utrecht had been put under the protection of the crown of Great Britain, for the sake of commerce.

<sup>2</sup> Warburton : *Conquest of Canada*, Vol. 2, p. 375.

population which were to follow. He had pushed the border westward, so that the possibilities of the future might be seen. He was working out the problem that others had talked about.

Intercourse with the West and Northwest was now more important than before. The project of an improved water communication between the Hudson and Lake Ontario, by way of natural streams and the carrying places, for the advancement of Indian trade, was discussed. Washington had made observations which caused his mind to appear "absorbed and devoted to the mighty object of forming a navigable intercourse with the Western country and the lakes." He thought the fur trade could be drawn toward the Potomac.<sup>1</sup>

But it was not till after the Revolution that these ideas of closer connection with the West were to be realized.

When the idea of independence from the rule of England had become a part of the consciousness of the people of the United States in 1776 there was no accurately defined limit to the territories of the new nation. The Quebec Act of 1774 had declared the country between the Ohio and the Great Lakes to be a part of Canada. The new States had a good reason to claim Western lands; but the land north of the Ohio was *de facto* a part of Canada. The marching of an army into it was really an invasion of Canada, and this was not favored by the Continental Congress at the beginning of the Revolution.<sup>2</sup> After Ethan Allen took the fortified places on the borders of Lake Champlain, and the armed sloops and boats upon its waters, he suggested to the New York Congress that this key should be held, and that "if the colonists would push two or three thousand men into Canada they might make a conquest" of it. He spoke of the value of establishments upon the frontier farther north. But the New York Congress had disavowed hostile intentions against

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<sup>1</sup> R. Mills : Inland Navigation, p. 7.

<sup>2</sup> Sparks : Life of G. Morris, Vol. 1, p. 54.

Canada, and it now assured her so by letter. The Continental Congress gave the same assurance. But in less than three months, after the battle of Bunker Hill had helped to ripen the aggressive spirit of the nation, an expedition was ordered against Canada. It might have been a success when Allen wrote, but it proved a failure at the time it was planned. Canada was at first disposed to be neutral, but finally took up the British cause. The clergy were against the American cause.

But the Americans were more successful in their attempt to conquer the territory between the Ohio and the lakes. Clarke succeeded in the Northwest, whereas Arnold and Montgomery failed in the North. The British were fully awake to the importance of holding the region between the Ohio river and the lakes. After Spain declared war against Great Britain (May 8, 1779), Lord George Germain, Secretary for the Colonies, wrote General Haldimand of it, and ordered him to reduce the Spanish posts on the Mississippi.<sup>1</sup> This was the last concerted action of the British to regain possession of the West, and it failed on account of the activity of the Spaniards under Governor Galvez, and through the energy of Colonel Clarke. If this Western scheme of the British had been successful the country north of the Ohio might have remained a part of Quebec. If this had been the condition in 1782 it is quite probable that the United States would have been shut out from the lakes and the Mississippi. Thomas Jefferson saw the importance of Clarke's expedition to the Wabash before it was made, and wrote that if it proved successful it would "have an important bearing ultimately in establishing our Northwestern boundary." America had begun to look forward to her "manifest destiny" in the North and West. France feared this.

The French always had fears of the American love of conquest. In 1778, in discussing an attack on Canada, the French ministers discouraged it. Turgot had, as early as

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<sup>1</sup> Winsor : Narrative and Critical History, Vol. 6.



1776, looked for the repossession of Canada by France in case the colonies succeeded. It seems to have been the settled policy of the French court from the beginning to prevent the United States from getting Canada. Mr. Morris saw that France favored Spain by wanting Canada to be held by the British, so the United States would be diverted from Spanish territory, and he said it was useless, for both England and the United States would be hostile to Spain. He thought England would be master of the lakes and a natural friend of the Americans.

Though Spain rendered valuable service, by helping Clarke to hold the land he had conquered until the treaty was drawn up, she did this through no unselfish motive. In 1779 Spain had wished that the Northwest should be guaranteed to England.<sup>1</sup> In her engagement with France to assist in the war against England she had demanded a stipulation that left her free to exact from the United States, as the price of her friendship, a renunciation of every part of the basin of the St. Lawrence and the lakes, of the navigation of the Mississippi, and of all the land between that river and the Alleghanies. Spain thought of laying claim to all the territory west of the mountains and south of the lakes. It was her ambition that induced her to say that the royal proclamation of October 8, 1763, kept the United States from having any territorial rights west of the Alleghanies.

Thus, at the close of the Revolution, the basin of the lakes remained British, and Spain had her eye upon the entire region west of the Alleghanies. It took diplomatic skill to extend our limits to the lakes.

The question of what should be our boundaries had been discussed in Congress at various times before the close of the war. In a report of a committee of Congress, February 23, 1779, it was stated that certain articles necessary for safety and independence should be insisted upon. Concerning the northern boundary, it proposed "the ancient limits

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<sup>1</sup> Bancroft, Vol. 5, p. 325.

of Canada, as contended for by Great Britain, running from Nova Scotia southwesterly, west, and northwesterly, to Lake Nipissing, thence a west line to the Mississippi." On March 19, 1779, Congress agreed to an *ultimatum* similar to this line. The line from Lake Nipissing was to run from the south point of the lake to the source of the Mississippi. If the source of the Mississippi had been as far north as the Lake of the Woods, as it was supposed to be, Great Britain would, by this line, have been excluded from all the lakes except Superior.

In the instructions of Congress, August 14, 1779, to the minister, it was stated that "if the line from Nipissing to the Mississippi cannot be secured without war, you may agree to some other line not south of 45°." John Adams received the appointment as minister September 27, 1779, and went to France, but official influence there was thrown against the initiation of a treaty at that time. His commission was annulled by Congress June 15, 1781, and he was appointed one of five commissioners to negotiate a treaty. This commission was not tied up by absolute directions, and did not always follow such general directions as had been given it, but by wise diplomacy it secured better terms in the treaty than Americans had dared to expect in 1781 at the time of Cornwallis' invasion of Virginia.

It is not within the scope of this chapter to enter into the interesting details of the many discussions and arguments at Madrid and at Paris, or even to mention all the proposed boundaries. It can only notice the main features. The attitude of England was largely influenced by questions relating to Spain and France, and was not clearly defined from the beginning.

At one time in 1782 there was a strong probability of the cession of all Canada to the United States. In a conversation in April of that year, Franklin and Oswald agreed that occasions for future wars should be removed.<sup>1</sup> They saw that

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<sup>1</sup> Wharton : Diplomatic Correspondence of the Revolution, Vol. 5, pp. 540 and 541.

settlers along the long frontier were constantly furnishing matter for fresh differences. Franklin proposed that it would have a good effect if England would voluntarily offer to give up Canadian provinces on condition of being allowed free trade with them. He thought that if England kept Canada, the United States would have to strengthen her union with France. But popular opinion in England was probably against giving up Canada, and the influence of other events made the ministry more determined to hold this territory. The effort to secure the Ohio as the southern boundary was resisted by both Adams and Jay. At the same time, our ministers could expect better terms from England than they could hope to get from France and Spain, who, it appears, would have "cooped up" the United States between the Alleghanies and the sea if they could have done so. This led to secret communication with the English ministers, contrary to the expectation of Vergennes, the French minister. Vergennes had hopes of getting Canada for the French. Lafayette wanted it for the United States.

Although Oswald favored articles which gave the United States control of the lakes, the British ministry would not assent; and when the American ministers proposed either the line of  $45^{\circ}$  or the line through the lakes,<sup>1</sup> the British ministers chose the latter. Fortunately for us, their preference for a water boundary caused them to recognize the Great Lakes as our northern frontier. Doubtless, the British ministry saw that there was danger of Spain's getting the territory south of the lakes, and preferred to let the United States have it. Perhaps neither England nor Spain regarded the Treaty of Paris as final. It is not improbable that the war of 1812 revived English hopes of recovering the control of the lakes and the region south of them. The refusal of England to surrender the posts which she held south of the lakes at the close of the war shows the reluctance with which she agreed to the boundaries.

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<sup>1</sup> 6 Sparks' Diplomatic Correspondence of the Revolution, Nov. 6, 1782.

There were English who believed that the "Northwest Territory should never have been ceded to the United States." One writer said the cession was due to Oswald's ignorance of geography. In fact, for several years before Jay's treaty, merchants of Montreal tried to get a new line of boundary. Various changes in the boundary were proposed, and it was not until the Treaty of Ghent that the boundary through the lakes and the destiny of the Northwest were assured.

From pre-historic times water boundaries have been favorite division lines between tribes and nations. While high mountains have been a natural boundary, mere heights of land have not, as a rule, been considered better than rivers. Even such an unstable boundary as the Rio Grande, which is constantly annexing Mexican territory to Texas, or Texan territory to Mexico, seems preferable to one of a purely imaginary character.

The St. Lawrence and the lakes formed a *natural* boundary so far as they extended. The difference in sentiment that prevailed along the northeastern frontier south of the St. Lawrence prevented the fixing of that river as the boundary for its entire length, though there are commercial and other reasons which might have favored it.

It would have been to the immediate financial advantage of the British to hold the posts at Michilimackinac, Niagara and Oswego; a neutral zone of Indian lands south of the lakes would also have benefited the British as well as the Indians, but such a zone could not have been held forever from the advancing hosts of civilization. It is useless to ignore facts. The strong hand of the free white settler would ultimately have obtained the Indian's land for cultivation. And as the Indian was pushed westward, the original purpose of the British posts would have ended, and the increasing population south of the lakes would have made it necessary for the British to withdraw their pretensions to control the use of the lakes.

In 1783 Canada was not considered to be very desirable territory. Settlements in Upper Canada were very sparse. It is perhaps not profitable to conjecture to what extent the subsequent events of American history would have been changed if a part of Canada had been ceded to the United States. It is hard to prove *what might have been* the course of historical events. 

There was some objection to the boundary through the middle of the lakes on the ground that it could not be well defined, but conditions which have since arisen have tended to confirm the belief of the fathers that it was better than a line through a semi-wilderness. From a commercial and international standpoint the lakes have proven more and more to be the most logical solution of the boundary that could have been made.

.f. 7108.1.1



### III.

## THE STRUGGLE FOR THE CONTROL OF THE LAKES—1783-1815.

"The Great Lakes which stretch along your borders have been the scenes of desperate conflicts ; and even now, as the traveler proceeds up Lake Erie, he points to its western islands as the Greek patriot points to Salamis ; to the place where the lamented Perry gained his victory with Spartan courage, and made his report with Spartan brevity. There no monument can be erected. . . . The waves roll, and will roll over it ; but whoever passes by with no kindling emotion . . . let him distrust his own heart, and let his country distrust him."—*General Cass, in an address before the alumni of Hamilton College, 1830.*

Gouverneur Morris, in 1778, when he said that England would have control of the lakes, did not read the future as well as he had read it upon the question of internal navigation. But even after the Treaty of 1783 had settled their destiny on paper the course of events made it appear necessary that these lakes become the scenes of desperate conflicts before England would loosen her grasp upon their southern shores and become content to rest in peace on the opposite side. No American flag was yet floating upon this vast expanse of waters when national feeling had set the government to work under a written constitution. But in 1796, on board a small schooner of seventy tons, on Lake Erie, it was first raised. On June 12, 1798, Congress passed an act "For the construction and repair of certain vessels on the lakes, in the service of the government,"<sup>1</sup> and in 1802 the first government vessel was launched there.

The importance of the lakes had been seen from the first, and there was no intention of allowing our interest in them

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<sup>1</sup> Statutes, Vol. I, p. 564.

to lapse. As early as 1784 Washington had urged that Congress should have the Western waters explored and their capacities for navigation ascertained as far as the communications between Lake Erie and the Wabash, and also between Lake Michigan and the Mississippi. He saw that the spirit of emigration was abroad in the land, and that the lakes would bear a close relation to the development of the Northwest. The excellence of the interior country in the region of the lakes was becoming better known, and people were beginning to write of the possibilities of the lakes and of inland navigation. Jefferson urged the necessity of connecting the Potomac with the lakes.

The increasing importance of the Northwest did not diminish the tendency to friction in that region. The British did not give up the posts south of the lakes. The Treaty of Paris had scarcely been made when the British began to accuse the Americans of breaking it. On the other hand, many Americans believed that it had never been the intention of Great Britain to surrender the posts and give up the trade of the lakes. It was desired to retain this commerce. John Tyler, of Richmond, wrote to Monroe in 1784 that "their policy is now to negotiate for this object by ceding the point of compensation and sterling debts."<sup>1</sup>

In July, 1783, Haldiman had refused to surrender the posts to Baron Steuben, and for thirteen years the British flag floated on American soil. The retention of the frontier posts had more than a sentimental effect. It was important from an economic standpoint. British officers levied duties on American vessels passing the posts. Traders and boatmen were kept in a constant state of irritation. To the American fur-trader it meant a loss of much trade. To the Western Indians it gave hope that they would be allowed to hold the land north of the Ohio river.

Traders and refugees in Canada complained that there was danger of the Americans getting control of the fur trade. At

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<sup>1</sup> Monroe Papers, Vol. 7, p. 463.

this time it seems that the English Government did not allow private vessels to navigate the lakes, and there were many complaints that there were not enough of the King's vessels to meet the needs of trade. There were petitions for private vessels, but the government would not allow them.<sup>1</sup> An attempt was made to "persuade the King and ministry to build a fleet of armed ships upon the lakes, and to negotiate with all the Indian nations, in order to attach them to their side."<sup>2</sup>

Some people favored an alliance with England, in order to get better trade advantages. Kentucky had separated from Virginia in order to form a new State, and its citizens even thought of separation from the rest of the nation and alliance with England.

Affairs had not improved in 1791, when Jefferson drew the attention of the American representative at London to the fact that the British still held many posts along the lakes, that British officers had tried to exercise jurisdiction in the vicinity of the forts, and that they had excluded American citizens from the navigation of the American side of the lakes and rivers forming the boundary, and had thus seriously interrupted their fur trade. England had sent no minister to the United States till 1791. Hammond, who was sent in that year, claimed that the Americans had never fulfilled their part of the treaty in regard to debts. He and Jefferson carried on a long correspondence in regard to the subjects of misunderstanding, but no settlement of difficulties was reached.

New dangers arose. In 1793 there was talk of Western New York joining Canada if the people there could not get the right to form a new State. War between France and England threatened to be a source of much trouble to the American nation. The treaty of 1778 had placed the United

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<sup>1</sup>Canadian Archives, Series 2, Vol. 25, pp. 111, 118, 128, 298. Report of 1891.

<sup>2</sup>4 Sparks' Dip. Cor., p. 467. (Adams to Jay, Dec. 1785.)

States under obligations to France. The subsequent convention of 1788 gave a jurisdiction to French consuls which was embarrassing to the United States as a neutral. The government was firm in declaring a neutral policy, but public sympathy, especially in the South, was with France. Both England and France issued decrees for the seizure of vessels carrying provisions to an enemy's port (1793).

On April 24, 1794, the Republicans in Congress moved to discontinue commercial relations with England until the lake posts were given up. This led Washington to send Jay to London to negotiate a treaty, with instructions not to surrender upon any consideration any of the posts on any part of American territory.

A few days after Jay's departure for England considerable alarm was aroused by the report "that Governor Simcoe had marched to the rapids of the Miami lake with three companies of Colonel England's regiment to build a fort there."<sup>1</sup> The American Government was in doubt as to whether Simcoe's movement was a part of a systematic attempt to regain territory, but it was certain as to its own policy. It would not surrender its territory to the British, although the danger of war was clearly seen.<sup>2</sup> Washington was convinced that as long as the British retained Detroit and other posts within the limits of the United States, a condition of perfect tranquillity with the Indians could not be secured.

In October, 1794, Simcoe told the Indians at Fort Miami that he was going to Quebec and that the English would be prepared to attack the Americans and drive them back across the Ohio the following spring. But in the absence of the British, the Indians met Wayne at Greenville, Ohio, on August 3, 1795, and made large grants of territory to the United States.

The authorities in Canada at this time were considering the importance of the naval force for the defense of Canada.

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<sup>1</sup> 2 Instructions, May 27, 1794. (Randolph to Jay.)

<sup>2</sup> 2 Instructions, May 27, 1794.

It was recommended that in case of hostilities the militia should be liable to serve on the lakes as well as on the shore.<sup>1</sup>

By Jay's treaty, signed November 19, 1794, it was agreed that the English troops were to withdraw from all the territories in the United States on June 1, 1796. There were other advantageous provisions, but the treaty met with much opposition in the United States. Some of the people were so impracticable as to advocate a prevention of trade with the Northern neighbors.<sup>2</sup> They would have nourished violent enmity rather than have friendly intercourse, and would have kept the vessels of each party from crossing the middle line of the lakes.<sup>3</sup>

There was a strong feeling that there was a want of reciprocity in the provisions regarding the navigation of the lakes. "Columbus," of Virginia, said the United States should have had egress and ingress from the lakes to the Atlantic, else her goods must go in British ships and give Great Britain a monopoly on the lakes. He also said that the importation of arms and warlike stores should have been prohibited by way of the lakes. The people of Richmond county, Virginia, objected to the clause which allowed British subjects to remain at the Western trading posts, and said it was an "actual cession of the key of the lakes to the Crown of England," and the "establishment of the British Empire in the bosom of the Union."

In 1795 an effort was made to prevent appropriations for the carrying out of the treaty. Only the popularity of Washington saved the country from repudiation and war with England.

War was averted, and our commerce grew. Relations grew better with England as they grew worse with France.

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<sup>1</sup> Report of Canadian Archives, 1891. State Papers, Upper Canada, p. 30.

<sup>2</sup> American Remembrancer, Vols. 1, 2 and 3. Also, Madison Papers, Vol. 5.

<sup>3</sup> Freedom of commerce and navigation in the waters of both countries was granted to the inhabitants of each, subject to local laws and regulations.



For awhile Pitt hoped to get the United States as an ally against France. This, of course, was not the American policy. Washington desired to avoid "entangling alliances" as well as antipathies. But even Jefferson, the leader of the Republicans, spoke in favor of alliance against France in April, 1802, when he was considering the recent cession of Louisiana by Spain to France. He wrote: "The day France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low-water mark. It seals the union of two nations, who, in conjunction, can maintain exclusive possession of the ocean. From that moment we must marry the British fleet and nation." There was no desire to see Napoleon set a foothold in America.

But with the news of fresh convulsions in Europe, and with the purchase of Louisiana by the United States, the attitude toward England became less cordial. The new British minister, Anthony Merry, and his wife, who came to Washington the latter part of 1803, adopted a grumbling tone, which increased the coolness. They were dissatisfied with the inconveniences of travel and life in the new country, and found fault with Jefferson's table etiquette and ideas of equality. Mrs. Merry felt that Jefferson did not pay her enough attention. She thought that Jerome Bonaparte and wife were treated better than herself. Social complaints were complicated by other matters. Madison insisted upon neutral rights. Rufus King's boundary convention between the Lake of the Woods and the Mississippi was not ratified. The Federalists encouraged the trouble with Merry. In February, 1804, he was taken into a plot for a New England confederacy. He was also drawn into Burr's schemes for the separation of the Western territory. Merry's letter sent to the Foreign Office caused his recall after Pitt's death, and England was not drawn into the Burr conspiracy, but matters had been drifting to a position which looked like war with England.

England and France, in adopting a campaign of starvation in their war against each other, greatly embarrassed

American commerce. The Order in Council of May, 1806, declared a blockade of the coast of Europe from Brest to the Elbe. Napoleon's Berlin Decree of November, 1806, declared a blockade of the British Isles, and prohibited commercial relations with them. Great Britain wanted the United States to resist the Berlin Decree, but the United States Government complained that the new treaty which was proposed to take the place of Jay's treaty was unfavorable to the United States. In January and November, 1807, Great Britain issued new Orders in Council to prevent neutrals from trading with France. Napoleon, in December, issued his Milan Decree, making it legal to seize any ship in ports under his control if it had attempted to obey the English orders. These acts were a severe blow to American commerce. In addition to the above orders, the British had claimed the right to search American ships for deserters and to impress all whom they should decide to owe allegiance to Great Britain. Jefferson was finally led to a policy of commercial restriction in order to prevent war.

In 1808 relations were much strained. General Hull suggested to the administration the expediency of placing armed vessels on Lake Erie in order to protect the communication with the Northwest Territory. The Jay treaty had not prevented subsequent sources of irritation upon the lake frontier. It seems that the revenue officers of the United States had from time to time "attempted to exact duties upon goods crossing the portages." The Canadian traders resisted such duties on the ground that the Jay treaty gave them freedom of commerce and intercourse. It was also claimed that the situation of American ports of entry on the boundary lakes and rivers, and the nature of the navigation, made it difficult to observe rigidly the regulations which were applicable to Atlantic ports, and that all impediments to trade should be avoided. It seems that in some cases Canadian vessels had been seized because of their too great proximity to particular ports or shores, though the claim was set up that there had been no intention of infringing the revenue

laws of the United States. The necessity of securing the "neutrality of the lakes and waters" in order to prevent this restriction on trade was urged several years later.<sup>1</sup> The British traders were using every effort to retain the control of the lake trade, but the events of the next four years were to lessen their influence and give Americans an opportunity to obtain supremacy upon the inland waters. In 1808, Mr. Canning complained to the United States minister that an attack had been made upon some British boats on the lakes, in violation of the treaty of 1794, and was causing great alarm and anxiety among the British traders.<sup>2</sup> The vexatious English Orders in Council were not repealed, and the seizure of American vessels upon the seas was not discontinued. England's policy in her war with France was leading her into a second war with the United States. Affairs were complicated by the attitude taken by Mr. Jackson, the British Minister at Washington, in regard to social and diplomatic relations. Unhappily, also, the elections for Congress took place during a whirlwind of passion. Finally, the Indian troubles in 1811 aroused the hardy men of the frontier, who believed that the attitude of the savage was due to the influence of the British.

The fiery speeches of fascinating leaders, and the slowness of the British Government in repealing the Orders in Council, forced the administration at Washington into what has since been called an "unnecessary and unwise war." Though this war was begun in order to secure American rights upon the ocean, the lake frontier was the principal theatre of military operations, and one of the most important struggles in the negotiations for peace was to secure American rights upon the lakes and the adjacent southern shores.

At the beginning of the war the importance of securing command of the lakes became at once evident. The first

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<sup>1</sup> Pamphleteer, Vol. 6, pp. 35, 43, etc. (Nathaniel Atcheson on "American Encroachments.")

<sup>2</sup> Am. State Papers, Vol. 3, p. 226. (Pinckney to Madison.)

plan of the Americans was to cut the British off from the West by an invasion of Canada from Detroit. The idea was to get control of the lakes. Hull had opposed the invasion of Canada just then, as it was too strong to be overcome by American forces and was likely to be aggressive in return. During the winter of 1811-12 Hull had been at Washington, and believed that the war could be avoided. When the invasion of Canada was being discussed he had favored placing a force at Detroit for protection, but he did not favor making this a part of the plan for getting control of the lakes. He believed that with Detroit protected the Indians could be kept from Malden, and that the British, unable to hold Canada without them, would leave it, and that the command of the lakes would be obtained without a fleet. But the surrender of Mackinaw in July, and of Hull at Detroit in August, left the British in command of the lakes and the Northwest, together with a greater influence among the Indians.

When the war began the United States had no naval force on the lakes. The British had the advantage in this respect. As early as October 8, 1812, however, the British armed vessels, the *Detroit*<sup>1</sup> and the *Caledonia*, were captured by Lieut. Jesse D. Elliot.<sup>2</sup> Even as early as July 1st Captain Woolsey had requested twenty six-pounders with which to arm such vessels of commerce as could be found upon Lake Ontario. This request had been referred to the navy by Captain Chauncey. On October 12th General Armstrong wrote to Secretary Gallatin that it was not yet too late to accomplish Woolsey's object, which would not only be important in giving "exclusive and uninterrupted use of the lakes for public purposes," but would also "effectually separate Upper Canada from Lower Canada."<sup>3</sup>

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<sup>1</sup> The baggage of Gen. Hull and family was on the *Detroit*. It had taken Hull's family part of the way. Hull himself had been furnished with passage across the lake by a British armed vessel detailed on purpose—a courtesy creditable to both parties.

<sup>2</sup> It appears that British commercial vessels were captured on Lake Ontario even before the war commenced. (16 Domestic Letters, p. 278.)

<sup>3</sup> Armstrong : Notices of the War of 1812, Vol. I, p. 177.



The expectation of getting command of the lakes by the invasion of Canada having been disappointed by the surrender of General Hull at Detroit, measures were now taken by the United States Government to get control of these inland seas by providing upon them a naval force superior to that of the enemy.<sup>1</sup> There was no doubt about the quantity of water being sufficient to float the largest ships. The storm waves upon these watery depths might challenge those of the great ocean. The difficulty came in getting vessels ready to float. It was no easy matter to create a navy upon these inland waters. They were inaccessible to vessels from the sea, and there were no large shipbuilding plants upon their borders as there are now. Settlements were sparse upon the south shores of the lakes, and most supplies had to be brought from the seaboard at great expense.

The difficulties were probably greater for the British than for the Americans.<sup>2</sup> President Madison was confident of ultimate success in driving the British traders out and getting control of the lakes. In his message to Congress on November 4th he said: "Should the present season not admit of complete success, the progress made will ensure for the next a naval ascendancy, where it is essential to our permanent peace with, and control over, the savages."

It is hard to say who first proposed a naval armament upon the lakes. It has been attributed to General Harrison by Mr. Profit, of Indiana. The posts which General Harrison had to recover in 1812-13 were separated from the frontier settlements by a swampy forest for 200 miles. The British, just after the fall of Detroit, commanded Lake Erie with their fleet. It occurred to Harrison that the best plan was to build a fleet on the lake to co-operate with the forces on the land.<sup>3</sup> The same idea may have occurred to others also.

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<sup>1</sup>Am. State Papers, Foreign Relations, Vol. 1, p. 80. Madison's Message of November 4, 1812.

<sup>2</sup>James: Naval Occurrences, p. 285.

<sup>3</sup>Hildreth: Life of Harrison, p. 130. Also, Harrison's Correspondence with the War Department.



General Armstrong called attention to the fact that the whole extent of Canada's defense rested upon navigable lakes and rivers, and wrote that no time should be lost in getting naval ascendancy on both, "for the belligerent who is first to obtain this advantage will, (miracles excepted), win the game." But Armstrong at first, probably, did not have in view the creation of a navy outside of the "commercial craft." General Harrison's plan was quite in harmony with the view of Armstrong.<sup>1</sup> On April 4, 1813, the latter wrote Harrison: "Our first object is to get command of the lakes. It can be done by June 1st. This is your easy, safe and economical route to Malden." These were also the views of the Government at Washington. In addition to the vessels that had already been equipped, Congress, by Act of March 3, 1813,<sup>2</sup> authorized the President "to have built or procured such a number of sloops of war, or other armed vessels, to be manned, equipped and commissioned, as the public service may require, on the lakes."

In his message of May 25, 1813, Mr. Madison was able to say, "On the lakes our superiority is near at hand where it has not already been established."<sup>3</sup>

By August, 1813, when Perry's fleet won the brilliant victory on Lake Erie, the Americans had gained such a start of England upon the lakes as England was never able to overcome. Mr. James, in his "Naval Occurrences," attributes this American success to the greater difficulties of equipping British vessels "3500 miles from home, penned up in a lake on the enemies' border, inaccessible to water."

The continued success of the Americans upon these boundary waters enabled them to ask conditions which would be more favorable to peace in that region at the close of the war.

Jay's Treaty of 1794 allowed British subjects "to navigate all the lakes, rivers and waters of the United States up to the

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<sup>1</sup> Armstrong : War of 1812, Vol. 1, p. 245.

<sup>2</sup> U. S. Stats. at Large, Vol. 2, p. 821.

<sup>3</sup> Am. State Papers, For. Rel., Vol. 1, p. 83.

highest ports of entry," and permitted the British traders from Canada and the Northwest Company to carry on trade with the Indian tribes within the limits of the United States. It had become evident that the influence of these traders upon the Indians was against the interests of the inhabitants of the Northwest. From the beginning of the war it was the object to stop this trade. This was the purpose of the invasion of Canada to the east of Detroit.<sup>1</sup> The idea of conquest was not planned except to the extent necessary for protection.<sup>2</sup> It was considered that the possession of West Canada was necessary to our peace.<sup>3</sup> Another idea of the United States Government in conquest was to get territory which could be returned to England in return for the privilege of excluding British traders from American territory, and of keeping superior naval forces on the lakes by which they could prevent British traders from navigating the lakes and rivers exclusively within American jurisdiction.

It was not conquest simply for the sake of conquest. It looked forward to security. Jefferson wrote to Monroe, June 19, 1813: "What we do in Canada must be done quickly, because our enemy, with a little time, can empty pickpockets upon us faster than we can enlist honest men to oppose them if we fail in this acquisition. . . . Could we acquire that country [Canada] we might, perhaps, insist successfully at St. Petersburg on retaining all westward of the meridian of Lake Huron, or Lake Ontario, or of Montreal, according to the . . . of the place, as an indemnification of the past and security for the future. To cut them off from the Indians, even west of the Huron, would be a great security."<sup>4</sup> On June 23, 1813, when the land and naval forces

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<sup>1</sup> Monroe Papers, Vol. 13. (No. 1696, Jefferson to Monroe, June 19, 1813.)

<sup>2</sup> Clay's idea of conquest in 1812, however, was not thus limited. He was not for stopping at Quebec or anywhere else, and did not want to see peace till the whole continent was taken.

<sup>3</sup> 7 Instructions, April 15 and June 23, 1813.

<sup>4</sup> Monroe Papers, Vol. 13.

of the United States had taken York and Forts George and Erie, and there was a good prospect of getting all Upper Canada, Monroe wrote Gallatin, Adams and Bayard that while such success would have a salutary influence on negotiations for peace, it was not intended to continue the war rather than restore Canada, even though England should have no equivalent restitution to make to the United States.<sup>1</sup> It was expected, however, that England would be more just upon other points to be adjusted.

We may say that there was a strong feeling that peace could not be preserved while the British retained their influence in the Northwest.<sup>2</sup> Monroe, on January 1, 1814, wrote the ambassadors that the capture of the documents with Procter's baggage showed the Indian trouble to be due to British influence, and that this fact would give great support, in case of negotiation, to the considerations in favor of the cession of Canada to the United States, or, at least, that portion lying between the western end of Lake Ontario and the eastern end of Lake Huron. By January 28, 1814, Monroe had given the question further study, and wrote that "experience has shown that Great Britain cannot participate in the dominion and navigation of the lakes without incurring the danger of an early renewal of the war."<sup>3</sup> He saw that it was by means of the lakes that the British had gained an ascendancy over the Indians, even within the limits of the United States. Monroe not only feared the continuation of massacres along the frontier, as likely to be a fruitful source of controversy, but he saw that the rapid settling of the country would increase the tendency to collision between the two sides. He did not doubt that western emigrants would soon push the western limit of settlement from the southwestern limit of Lake Erie until they reached "the banks of the Michigan and even of the other lakes," and he feared the "cupidity of the British traders" could not be controlled. He

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<sup>1</sup> 7 Instructions, p. 299.

<sup>2</sup> 7 Instructions, p. 308.

<sup>3</sup> 7 Instructions, p. 315.

urged in favor of cession that the inevitable consequence of another war, and even of the present if persevered in by the British Government, would be to sever the western provinces by force from Great Britain, and that the inhabitants of the provinces would soon feel their strength and assert their independence anyhow. In case no cession could be obtained, the exclusion of British traders from our side of the lakes, and the increase of our naval force on the lakes, was the remaining remedy.

Writers in England, on the contrary, were proposing a boundary farther south than the lakes. Nathaniel Atcheson, in an article of March 2, 1814, on "Points to be discussed in treating with the United States," said that the great feature of the new line should be "exclusion of the Americans from navigation of the St. Lawrence, and all the congregation of tributary seas and waters. They are the natural patrimony of the Canadas. Water communications do not offer either a natural or secure boundary. Mountains separate, but rivers approximate mankind." "Hence," said he, "the prominent boundary should be the heights of land separating the respective territories."<sup>2</sup> This would have given to England Lake Champlain, all of the Great Lakes and a considerable amount of territory south of the lakes. In case this line could not be obtained, but a line through Lake Ontario and Lake Huron should be agreed upon instead, Mr. Atcheson held that "at all events the line should pass from Lake Erie up the Sandusky river to the nearest waters of the Ohio, and then down the Mississippi." In the latter case he would have had it stipulated that "no vessel belonging to the Americans exceeding a certain burden, twenty or thirty tons, which is a size adequate to the trade of those regions, should be suffered to navigate any of the lakes," and that no fortifications should

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<sup>1</sup> Pamphleteer, Vol. 5, No. 9, Feb., 1815.

<sup>2</sup> Marquis Wellesley, in a speech before the House of Lords, on April 13, 1815, said the war with America was a calamitous one, and should have been stopped as soon as possible, without any demands for territory south of the lakes. (*American Register*, Vol. 1.)

be erected upon any of the waters connected with the lakes, "whilst the right of the British in these respects should be reserved to be exercised without restriction."

In the meantime, the English were losing more and more their control of the lakes. Since Lake Erie had been won, the shores of the more western lakes were being scoured to prevent the British from opening intercourse with the Indians. Vessels were being built<sup>1</sup> upon Lakes Ontario and Champlain in the spring of 1814, and it appeared evident that the British would soon be shut out from the Western lakes and posts, thus putting an end to further naval expenditure on Lake Ontario, and practically giving the United States possession of a great part of Upper Canada. General Armstrong felt that it would be easy then to gain Montreal and bring the war to a speedy and favorable termination.

On June 23, 1814, Monroe was still urging the advantages to both countries of a transfer of the upper parts of Canada to the United States.<sup>2</sup>

Castlereagh having offered to open negotiations direct with the representatives of the United States Government, commissioners had been appointed by President Madison at once. These commissioners were ready to negotiate in June, but Castlereagh, it was said, wished delay so that British troops could occupy territory along the lakes which they intended to hold.

When the British commissioners met the United States commissioners at Ghent, in August, they soon dispelled any hopes which may have been held regarding cession of Canadian territory to the United States.<sup>3</sup> They made the "moderate" proposal that Great Britain, being the weaker power on the North American continent, should have military occupation of the lakes, in order to prevent the conquest of her dominions by the Americans.<sup>4</sup>

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<sup>1</sup> Stats. 3, p. 139. Act of April 18, 1814.

<sup>2</sup> 7 Instructions, pp. 297 and 361.

<sup>3</sup> Am. State Papers, For. Rel., Vol. 3, p. 709.

<sup>4</sup> "America," Vol. 129. Also, see Letters and Despatches of Castlereagh, Vol. 2, 3rd Series. Marquis Wellesley said that the ground of weakness should not have been urged.



At first, they were also determined to secure for the Indians a strip of territory south of the lakes. This was not so much in recognition of the rights of their copper-colored brethren, as human beings, to be included in the provisions of public law; it was rather an attempt to secure a "barrier against American aggression" upon Canada. This barrier would have been formed by cutting off from Ohio and the territories of the Northwest a country more extensive than Great Britain and containing thousands of freemen.

But the American commissioners could not accede to either of these propositions. They denied the right of England to interfere in the concerns of the Indians residing in the United States, and did not propose to give up their equal right to the lakes. They wished for peace upon those terms of reciprocity honorable to both countries. They sent this reply on August 24, 1814. At that time it seemed that negotiations would come to an end. Clay wrote that "reliance will be much better on the firmness and energy of the American people to conquer again their independence."<sup>1</sup> Adams wrote in his diary that they had decided it would not be necessary to rent their house for another month. The British commissioners, after writing a reply, sent it to Lord Castlereagh at Paris, and he promptly took the pains to submit it to the government at London.<sup>2</sup>

Adams, on September 1, called to see Mrs. Goulburn, the wife of one of the British commissioners, but saw only her husband, whose conversation was not such as could have

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<sup>1</sup> Monroe Papers, Vol. 14, August 19.

<sup>2</sup> Castlereagh was more favorably disposed toward the United States than were any of the other members of the ministry. Coming from France, and having had intercourse with Emperor Alexander, it is not improbable that these dispositions may have been increased by the personal expression of the Emperor's wishes in favor of peace with America. On his route to Paris, the latter part of August, he had stopped at Ghent. He did not see the American ministers, but on August 28 he wrote from Paris to Lord Liverpool that it would be well to "state the proposition as to Indian limits less peremptorily."

made Adams hope for further negotiations.<sup>1</sup> He stated that both the proposed Indian territory and the English control of the lakes had for their main purpose the security of Canada. Concerning the proposed Indian barrier, upon which neither party should encroach, Adams said that the United States could not be kept from settling and cultivating<sup>2</sup> lands which the Indians did not improve. It was clear that the United States was standing upon good grounds, and she did not propose to retire into the background. She could not with honor have given the Indians the frontier, any more than she could have given England control of the lakes. The onward march of settlement could not have been stayed by a bond of paper. Though the stroke of a pen had once given England half a continent, it could not insure the wilderness of the Northwest to the Indian and to the British trader.

During these negotiations the American forces were not idle on the northern frontier. On September 20, President Madison was able to say: "On the lakes, so much contested throughout the war, the great exertions made for the command, on our part, have been well repaid."<sup>3</sup> A part of the Lake Erie squadron had been extended into Lake Huron, though Mackinaw was still in the hands of the English. On Lake Ontario the American squadron was able to keep that of the British in their own port, and to favor the operation of land forces. The American superiority was fully established on Lake Champlain by the victory of McDonough and the destruction of the hostile fleet. On September 24, Jefferson wrote to Madison: "Their navy is no longer invincible as the world thought. We have dissipated that error. They must now feel a conviction that we can beat them gun to gun, ship to ship, and fleet to fleet."<sup>4</sup>

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<sup>1</sup> Adams' Memoirs, Vol. 3, pp. 24-29.

<sup>2</sup> Sir James Macintosh, on April 11, 1815, said that the British had tried to guard by deserts (Indian lands) what they could not guard by strength. Marquis Wellesley, in the British House of Lords, on April 13, 1815, spoke of the unreasonable demands of the British in regard to the boundary which they proposed.

<sup>3</sup> Am. State Papers, Foreign Relations, Vol. 1, p. 87.

<sup>4</sup> Jefferson Papers, Series 1, Vol. 13.

In the face of these circumstances, the news of the British proposals which reached Washington on October 9 created considerable surprise.<sup>1</sup> Madison wrote Jefferson, October 10, and intimated that the American commissioners would arrive in a few days unless a sudden change should be brought about in the British cabinet by the rupture of the negotiation, or by the intelligence from America and the fermentation taking place in Europe. Many people probably felt that England was changing the contest to one of conquest.<sup>2</sup> Jefferson believed that "we should put our house in order for interminable war;" and he said that in order to counterbalance the intention of England to conquer the lakes, the Northwest, etc., the United States "ought to propose . . . the establishment of the meridian of the mouth of the Sorel northwardly as the western boundary of all her possessions." Jefferson, who was promptly informed of all affairs at Washington, as late as the early part of December wrote that the documents distributed by Congress, and the map of Mr. Mellish illustrating the first British proposals, would prove to all that "reconquest [of the United States] is the ultimate object of Britain." He says that the "first step toward this is to set a limit to their expansion by taking from them [the United States] that noble country which the foresight of their fathers provided for their multiplying and needy offspring." "As to repressing our growth," he added, "they might as well attempt to repress the waves of the ocean." Jefferson believed that the British commissioners had been holding off to see the issue, not of Vienna, but of the Hartford Convention.

It must be admitted that the policy of the English appeared neither liberal nor amicable. But it must also be borne in mind that this was partly due, no doubt, to the fear of American conquest. In the reply of the British commissioners on September 4, they state that the "policy of the

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<sup>1</sup> Madison Papers, Vol. 7. Jefferson Papers, 2nd Series, Vol. 58, No. 59.

<sup>2</sup> Jefferson Papers, 1st Series, Vol. 13. (To Monroe, Oct. 13; to Madison, Oct. 15; to Mellish, Dec. 10.)

United States has become one of conquest and aggrandizement," and that England should have military possession of the lakes to prevent the Americans from commencing a war in the heart of Canada, and because their possession was not necessary to the safety of the United States.<sup>1</sup> The reply proposed that the south shore of the lakes might be left in possession of the United States in case they should not build fortifications near them, and declared that there was no desire to interfere with the commerce of the United States upon the lakes in time of peace.

It was at this point in the negotiation, Adams says, that "Bayard manifested symptoms of concession on the points proposed by the British commissioners,"<sup>2</sup> but all stood together in the reply of September 9, in which the ground was taken that Great Britain had a sufficient pledge for the security of Canada from sudden invasion in the mass of American commerce upon the ocean—a commerce more valuable than Canada, and which was exposed to the great superiority of British forces. It was promptly denied that conquest was the policy of the United States.

Thus the American commissioners remained firm, but, at the same time, they kept a peaceful attitude. It was well that they did so. It drew forth a better spirit in the reply of the British commissioners on September 19. They stated that as soon as the Indian question was adjusted they felt confident the question of boundary could be settled to the mutual satisfaction of the parties.<sup>3</sup> Negotiations took a more hopeful shape at once. But peace was not yet a certainty. The loss of a battle to the Americans might have encouraged the British to hold out for a boundary to the south of the lakes. The *London Courier* of September 29 probably indicates the feeling of the government when it says: "Peace . . . must be on condition that America has not a foot of land on the waters of the St. Lawrence, . . . no settlement on the lakes."

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<sup>1</sup> Am. State Papers, Foreign Relations, p. 713.

<sup>2</sup> Adams' Memoirs, Vol. 3, Sept. 6.

<sup>3</sup> Am. State Papers, For. Rel., Vol. I, p. 718. Also in "America," Vol. 129, at Record Office.



The United States desired only to preserve her independence entire, and to govern her own territories without foreign interference, and when, a few days later, the British commissioners offered their *ultimatum* upon the subject of the Indian pacification, it was accepted as conformable to the views of the United States Government, though Adams wanted to represent it rather as a great concession, and also urged that it would be a convenient policy to avow that the cession of Canada would be for the interest of both countries.

From this time negotiations were continued in a better spirit of reciprocity. On October 17 the news of the failure of the British invasion of New York reached London. The news from Baltimore and Fort Erie soon followed. Clay thought that the attitude which France was taking at Vienna would help the United States in securing an honorable peace,<sup>1</sup> but, in his opinion, the events at Baltimore and on Lake Champlain would have much greater influence, "for it is in our own country that at last we must conquer the peace." With no American disaster in the North, peace could soon be made.

Most difficulties had been removed by October 31, when the commissioners wrote that the Indian boundary, together with the claim to exclusive control of the lakes, had both been given up by the British.<sup>2</sup> The British now clearly saw that they could not secure by treaty what they had failed to secure by force of arms. Wellington said they had no right to demand territory.<sup>3</sup> By winning the naval supremacy upon the lakes the Americans were able to secure the continuation of the boundary of 1783 through the middle of the lakes, and to secure provisions by which the dangers from the British traders of the Northwest were overcome.

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<sup>1</sup> Monroe Papers, Vol. 4, Oct. 26.

<sup>2</sup> Jefferson Papers, 2nd Series, Vol. 58. (Monroe to Jefferson, Nov. 30.)

<sup>3</sup> Castlereagh Correspondence, Vol. 10, p. 168. On October 18, Bathurst thought the British would be allowed to keep Michilimackinac and Niagara. On Oct. 20, he hoped to get a cession of five miles around Niagara.



The news of the Treaty of Ghent, signed December 24, did not reach America until the Americans, at the battle of New Orleans, had shown their ability to protect the South as well as the North. The thinking people everywhere received the news with gladness, with the exception of some farmers on the northern frontier and a class of people in England who wanted to send Wellington to America.<sup>1</sup> The expense of the navy upon the lakes could now be reduced,<sup>2</sup> soldiers could return to their peaceful citizen life, and the development of the country under new opportunities would go forward with greater rapidity.

It was considered a fortunate thing for both countries that their minds could now be turned from the temptations of external extension to the duties of internal growth. Jefferson wrote that Quebec and Halifax would have been taken, but that peace and reconciliation were better than conquest by war. He thought, however, that England had been "riding upon a bag of wind, which must blow out before they settle to the true bottom."<sup>3</sup>

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<sup>1</sup> It was "mortifying" to the British officers to have to give up Michilimackinac and the territory west of Lake Michigan. The treaty was not what they had expected in regard to the Indians. But they decided to "try to gild the bitter pill which the Indians must swallow" in seeing Mackinac Island given up. They expected, however, to get a *new* fortress with a new harbor for future naval forces. McDouall, commander at Michilimackinac, wrote to Bulger, who was commanding on the upper Mississippi, that he was penetrated with grief at the loss of his fine island, but he stated that it would give an opportunity of equipping such a fleet on Lake Erie and Lake Huron as would secure the command of those lakes and keep open the communication with the Indians. He said that since peace had been concluded, a war on their part should be most sedulously avoided until the fleet on Lake Erie was restored, and the supremacy of Lake Huron was obtained. (See letters of April 25, May 1, and May 2, 1815, Wis. Hist. Coll., Vol. 13, p. 133, etc.)

<sup>2</sup> In England there was a feeling of uneasiness as to the policy of the United States in regard to Canada. Marquis Wellesley, in a speech before the Lords, April 13, 1815, said that war had turned America from the pursuits of peace and had formed a great military and naval power to act on the lake frontier.

<sup>3</sup> Jefferson Papers, 1st Series, Vol. 14. (To Francis C. Gray, March, 1815.)

He was not vindictive in what he said, but he had not despaired of the republic, nor lost confidence in its resources. "If they go on," he said, "they may force upon us the motto '*Carthago delenda est*,' and some Scipio Americanus will leave to posterity the problem of conjecturing where stood once the ancient and splendid city of London." He hoped that the good sense of both parties would concur in traveling the paths of peace, of affection and of reciprocal interest, and that the officials would do their best to cool the temper of both nations and to eradicate the war feeling which the newspapers had nourished.<sup>1</sup>

It was natural that the difficulties arising from the recent irritation on the border—greater in the United States, because it reached the bosom of every citizen—should not disappear at once,<sup>2</sup> and passion was assumed, artificially, by some for political effect; but, by the prudence of the two governments, it was hoped that the *invective* might, in time, be reduced to the minimum. Jefferson and Madison had been wrongfully abused as the enemies of England. Like Monroe and Adams, and other leaders, they rose above the passions of the hour. The influence of such men, at such a time, is invaluable. They set a good example to citizens of less experience. They can see the dangers of demagogues upon the overcredulous or upon the ready admirers of attitudes *bellicose*, and they can do much to stimulate a rational feeling. It was so with these men. They have added honor to the country which they served. And the generations of men that look back upon these fathers of the formative period of the American republic will honor them more that they did not nourish a feeling of hatred, but that they favored the burial of the "red rag." Jefferson wrote to Monroe, October 16, 1816, concerning the "inscription for the Capitol which the British burnt," that it "should be brief and so no passion can be imputed to it." He said that instead of

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<sup>1</sup> Jefferson Papers, 1st Series, Vol. 14. (To Mr. Maury, June 16.)

<sup>2</sup> Jefferson Papers, 1st Series, Vol. 14. (To Sinclair.)

perpetuating hatred "should we not rather begin to open ourselves to other and more rational dispositions?"<sup>1</sup> In a letter to his friend, Sir John Sinclair, with whom he had renewed correspondence after the war, the sage of Monticello wrote: "The past should be left to *history*, and be smothered in the living mind. Time is drawing the curtain on me. I could make my bow better if I had hope of seeing our countries shake hands together."

The lake boundary and the Northwest had been secured by the United States, the gates of the temple of Janus had been closed, and two kindred peoples were encouraged to occupy the same continent in peace.

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<sup>1</sup> Jefferson Papers, 1st Series, Vol. 14, Oct. 16, 1816.

#### IV.

### AGREEMENT OF 1817.

#### REDUCTION OF NAVAL FORCES UPON THE LAKES.

Peace had been concluded at Ghent amidst the festivities of Christmas Eve in 1814, and as soon as the slow-sailing craft of that day could traverse the waters of the Atlantic the news was proclaimed in America on each side of the lakes. But entire peace could not be guaranteed by proclamation. How was the temple of Janus to be kept closed? Manifestly, the most apparent danger of future collisions lay in the relations of the two peoples along the northern limits of the United States. While Jefferson was trying to "eradicate the war feeling which the newspapers had nourished," and wishing for the two "countries to shake hands together," what measures should be adopted to lessen the possible sources of future misunderstandings, as well as to accelerate the return of fraternal feelings, desires and actions? The development of the Northwest was affected by the presence of British troops in Canada and of British vessels on the lakes. How should this danger be avoided? These were questions which the wise, well-trained leaders of 1815 had before their minds.

Perhaps no better leaders could have been selected for the hour. They consulted only the interests of the country; they had no axe to grind at the expense of public peace. Their statesmanship did not sink into morbid abuse of some fancied enemy. They and the people for whom they stood, when they looked back and saw that the world had moved, began to look forward for the things that should grow in the new era of quickening activity, when great cities would be erected along the south shores of the liminary lakes.

"The statesmen of that period, sincerely desirous of establishing a lasting peace, applied their minds on both sides to effective arrangements which would render these waters neutral." They saw at once that if peace were merely to lead to a perpetual race in naval construction such a peace would be only temporary and expensive. Building of naval vessels would have gone on *ad libitum*, possibly *ad infinitum*, greatly to the emolument of shipbuilders perhaps, but at the risk of strained relations between the United States and Canada.

The first suggestion of the idea of making the lake region neutral appears to have originated during the administration of President Washington, and with the President himself, as a means of preserving peace at home.<sup>1</sup> On May 6, 1794, Mr. Randolph, Secretary of State, wrote to Mr. Jay, who had been sent to negotiate a treaty with England, that in case the "subject of a commercial treaty be listened to" it would be well to consider as *one* object the following: "In peace no troops to be kept within a limited distance of the lakes." There is no record of the consideration of this subject in the negotiations. Jay's treaty clearly gave Great Britain the advantage on the lakes, much to the disappointment of Mr. Madison and others,<sup>2</sup> but probably no better terms could have been secured at that time. It permitted British subjects "to navigate all the lakes, rivers and waters of the United States up to the highest ports of entry," but it was expressly stated that "vessels of the United States were not to be admitted into the seaports, harbors, bays or creeks of his Majesty's American dominions." By it the lake trade fell into the hands of the British, and by means of the lake trade they secured an influence over the Indians of the Northwest which they were able to retain till the War of 1812.

During that war the Americans were at first determined to shut the British out from the lakes. In this they were largely successful by force of arms, but in diplomacy it was

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<sup>1</sup> American State Papers, Foreign Relations, Vol. 1, p. 433.

<sup>2</sup> Madison Papers, Vol. 5.



considered inexpedient to insist upon securing control of the lakes. Such a policy would probably have broken off negotiations at the time, for Great Britain would hardly have given up such a great advantage to commerce, especially when she feared the dangers of conquest of her upper provinces by the Americans. By these considerations the American commissioners at Ghent were led to stand for "terms of reciprocity honorable to both countries." When the British commissioners were proposing that Great Britain should have military occupation of the lakes, the Americans asked only a renewal of the former boundary through the middle of the lakes.

Lord Castlereagh from the first desired to prevent a contest for naval ascendancy upon the lakes. In his general instructions to the British commissioners at Ghent there is no mention of the subject of naval vessels on the lakes, but in a draft of "instructions relative to the boundaries of Canada," which is marked *Not used*, there is at the close:<sup>1</sup> "N. B. In order to put an end to the jealousies which may arise by the construction of ships of war on the lakes, it should be proposed that the two contracting parties should reciprocally bind themselves not to construct any ships of war on any of the lakes; and should entirely dismantle those which are now in commission, or are preparing for service."

This unused draft is not dated, but it was probably written in July, 1814. For some reason it was considered expedient to make a less liberal proposition upon this subject. By August it appeared to Lord Castlereagh that a boundary line through the middle of the lakes, with the right of each country to arm both on water and shore, would tend to create a "perpetual contest for naval ascendancy in peace as well as in war." He therefore thought it necessary, for the sake of peace and economy, "to decide to which power these waters should, in a military sense, exclusively belong." In his instructions to the British commissioners on August 14 he said:

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<sup>1</sup> "America," Vol. 128, Public Record Office, London.

"Upon the point of frontier you may state that the views of the British Government are strictly defensive. They consider the course of the lakes from Lake Ontario to Lake Superior both inclusive to be the natural military frontier of the British possessions in North America.<sup>1</sup> As the weaker power on the North American continent, the least capable of acting offensively and the most exposed to sudden invasion, Great Britain considers itself entitled to claim the use of those lakes as a military barrier."

Lord Castlereagh stated that Great Britain should also have military command of the American shores of the lakes, though he was "disposed to leave the sovereignty of the soil undisturbed and, incident to it, the free commercial navigation of the lakes," provided the American Government would stipulate "not to preserve or construct any fortifications upon or within a limited distance of the shores, or maintain or construct any armed vessel upon the lakes in question or upon the rivers which empty themselves into the same."

Lord Castlereagh's proposal to disarm was not based upon the principle of reciprocity. It may, however, have suggested to the minds of American commissioners the idea of mutual disarmament. There is an intimation of the idea, at least, in their reply to the British commissioners (dated August 24, 1814) in which they are "at a loss to discover by what rule of perfect reciprocity the United States can be required to renounce their equal right of maintaining a naval force upon those lakes, and of fortifying their own shores, while Great Britain reserves *exclusively the corresponding rights to herself*." Though the United States had no guns upon the lakes before the war, she did not propose to give up her guns now and go back to her former condition in this respect. She desired to see England propose a more liberal and amicable policy toward America.

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<sup>1</sup> Marquis Wellesley, in a speech before the Lords, on April 13, 1815, said he could not see where the doctrine of the "natural limit of Canada" south of the lakes had originated.

The Government at Washington early in the war apprehended what would be the probable policy of the British. Monroe instructed the commissioners, April 15, 1813, under the proffered Russian mediation: "You will avoid also any stipulation which might restrain the United States from increasing their naval force to any extent they may think proper on the lakes held in common, or excluding the British traders from navigation of the lakes and rivers exclusively within our own jurisdiction." At this time, it should be noted, past experience and conditions made it appear necessary for the United States to keep a superiority of naval force on the lakes. Neutralization of these waters was probably not thought of at that time. Even as late as January 28, 1814, Monroe thought that participation in the dominion and navigation of the lakes by Great Britain would be a source of danger of the renewal of the war.

It appears that the first definite proposition of disarmament on the lakes was made by Mr. Gallatin. It was on September 6, 1814, when it seemed that negotiations could not proceed. Bayard manifested some symptoms of concession to the British proposals, and Mr. Gallatin proposed to offer at least to refer to the United States Government a "stipulation for disarming on both sides of the lakes."<sup>1</sup> Adams objected to this as not being in accordance with positive instructions. Here the matter dropped. But it was probably further discussed by the American commissioners, as a subsequent note seems to indicate. Their firm but friendly reply of September 9 was a factor in drawing from the British commissioners a more favorable reply, in which they asserted that they had "never stated that the exclusive military possession of the lakes . . . was a *sine qua non* in the negotiation," and that after the Indian question should be adjusted they could make a final proposition on the subject of Canadian boundaries, "so entirely founded on principles of moderation and justice" that they felt confident it could

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<sup>1</sup> Adams: Writings of Albert Gallatin, Vol. 1, p. 640. Also see J. Q. Adams' Memoirs, Sept. 19, 1814.

not be rejected.<sup>1</sup> The nature of this proposition is not stated. It was never brought forward, nor was any explanation given of what was intended by the offer. But the American commissioners supposed they intended to propose the mutual reduction of armaments, and on September 26 pledged themselves to meet such a proposition with perfect reciprocity.”<sup>2</sup>

This supposition is not stated in any of the official notes to the Department of State. Gallatin, however, wrote to Mr. Monroe on October 26: “The right of preserving our naval forces on the lakes to any extent we please is a *sine qua non* by our instructions. Supposing the British to propose a mutual restriction in that respect, either partial or total, should we still adhere to the *sine qua non*?” Clay wrote a private note to Monroe on the same day, in which he says that recent events at Vienna and in America had encouraged a hope for an early peace, but he does not allude to Gallatin’s note. It is probable that Gallatin wrote without consulting the other members of the commission. No reply to his note is found. In fact, if one was ever sent it could not have reached him until after Christmas Eve, when the terms of peace had been agreed upon.

Gouverneur Morris, who had been desirous for peace, and not desirous for Canada, during the negotiations also suggested the idea of disarmament. But his idea differed from that of Gallatin in being proposed as a matter of economy. On October 17, 1814, he wrote to Hon. William Welles: “It would be wise to stipulate that neither party should have ships of war on the lakes nor forts on their shores. Both are an idle and useless expense.” He added: “If they had there forty ships of the line and a dozen Gibraltars, we could with great ease take Canada.”

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<sup>1</sup> “America,” Vol. 129.

<sup>2</sup> Mr. Clay, on Oct. 9, however, was for rejecting any proposition to disarm upon the lakes if a proposed article by the British (ultimatum on Indian pacification) was admitted; because he considered that the two articles together would deliver the whole western country up to the mercy of the Indians. (Adams’ Memoirs.)

The work of reducing the expense of naval forces on the lakes began very soon after the peace. Mr. Jackson, of Virginia, on February 17, 1815, offered a resolution that the naval committee be instructed to inquire and report to what extent the United States navy on the lakes could be reduced consistent with public interest.<sup>1</sup> It was felt that while the United States forces ought, to some extent, to be regulated by those of Great Britain, all useless expenditures should be retrenched.<sup>2</sup> It was not the policy of the United States Government to fight to prevent a *possible* injury at a distant day. The government expected peace, and began to prepare for it. By Act of February 27, 1815, the President was authorized "to cause all armed vessels of the United States on the lakes to be sold or laid up, except such as he may deem necessary to enforce proper execution of revenue laws; such vessels being first divested of their armament, tackle, and furniture, which are to be carefully preserved."<sup>3</sup>

When Napoleon, dissatisfied with the small portion of the map of Europe that had been allotted him, issued forth from Elba to disturb the congress of map revisers at Vienna, the danger of a renewal of the war was apprehended in America. Madison wrote Monroe on May 5: "If Napoleon is restored, England and France will again pillage America." But he believed that, while the United States must maintain her ground and fight for her rights, she must avoid being a party to the European war. The nation was unwilling to relinquish the rights for which it had contended, but, at the same time, it was ready to support the government in such measures as were "best adapted to prevent a renewal of the war." The continuation of the war between France and England was fortunately averted, and thus one source of possible contention between England and the United States was removed.

There were several sources of dissension existing in 1815, the early adjustment of which was considered advisable.

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<sup>1</sup> House Journal, Vol. 9.      <sup>2</sup> Monroe Papers, Vol. 5. No. 629.



Those which endangered the peace between the United States and Canada were:

- (1) Restlessness and hostility of the Indians on the frontier.
- (2) Conduct of the British local authorities in Canada.
- (3) Desertion of British soldiers to the American side.
- (4) British armaments on the lakes.

Mutual surrender of the frontier forts was not made at once after the war. There were suspicions of insincerity on both sides.<sup>1</sup> Dallas wrote Monroe on May 28 that "we must be on our guard." Hostility of the Indians had not ceased. Some of the British officers had persisted in influencing them. It was found, however, that they showed a disposition for peace as fast as the British gave up the posts. By the commercial convention of 1815, the United States, in the interests of peace, refused to allow the British to trade with the Indians in United States territory, though it cost her the use of the St. Lawrence river.

Troubles were also arising concerning jurisdiction. The Americans complained of the conduct of the British officers in pursuing deserters into American territory, and in otherwise violating international usage. On the other hand, the British complained of the attempts of a United States officer on the frontier to seduce soldiers from the British service.

The authorities at Washington saw a greater probable source of future trouble in the evident intention of the British to increase their naval force upon the lakes. They had built several new vessels just before the peace, and the London newspapers in August, 1815, had announced that the British cabinet had determined not only to maintain, but also to augment the armed naval force on the lakes. The fact that an American merchant vessel upon Lake Erie, where the Americans had been dismantling their vessels, had been fired upon by a British armed vessel will show that there was reason for fearing the results of further augmentation.<sup>2</sup>

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<sup>1</sup> Monroe Papers, Vol. 15.

<sup>2</sup> Campbell: Political History of Michigan.

On July 22, when taking measures to prevent a United States officer from influencing soldiers to desert from the British service, Mr. Monroe, in a letter to Mr. Baker (who was temporarily representing the British Government at Washington), seems to intimate the necessity of a reciprocal stipulation in regard to naval forces.<sup>1</sup> At a later date, probably in November, Mr. Monroe had a conversation with Mr. Baker concerning the subject. On December 6, after reporting to Mr. Baker an inquiry into the case of Lieutenant Vidal, who had been fined for riot while pursuing offenders into American territory, Mr. Monroe wrote:<sup>2</sup> "This Government is sincerely desirous, as I had the honor to intimate to you in a late interview, to make such arrangements relating to the force to be kept on the lakes, and to the intercourse between the United States and the British provinces in that quarter, as will effectually prevent these evils."

John Quincy Adams was at this time minister of the United States to London. The information which he had sent on August 29 as to the intentions of the British Government to increase its force on the lakes was confirmed by later news from that quarter, which showed that preliminary measures had been taken. This arming appeared foolish, for it is hardly likely that England could have competed with the United States on the lakes if a policy was adopted of having rival fleets to parade those waters in time of peace. But the United States, anxious for the preservation of peace, was disposed to disarm there. Secretary Monroe wrote to Mr. Adams, November 16:

"It is evident, if each party augments its force there, with a view to obtain the ascendancy over the other, that vast expense will be incurred and the danger of collision augmented in like degree. The President is sincerely desirous to prevent an evil which it is presumed is equally to be deprecated

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<sup>1</sup> No. 2 Notes from State Department, p. 110. (To British Legation at Washington.)

<sup>2</sup> No. 2 Notes from State Department.

by both governments. He therefore authorizes you to propose to the British Government such an arrangement respecting the naval force to be kept on the lakes by both governments as will demonstrate their pacific policy and secure their peace. He is willing to confine it, on each side, to a certain moderate number of armed vessels, and the smaller the number the more agreeable to him; or to abstain altogether from an armed force beyond that used for revenue. You will bring this subject under the consideration of the British Government immediately after the receipt of this letter.”<sup>1</sup>

In accordance with these instructions, Mr. Adams brought the matter to the attention of Lord Castlereagh on January 25, 1816.<sup>2</sup> He called his attention to the fact that Canada had been the source of disagreement in the past, and that it might be a source of “great and frequent animosities hereafter, unless guarded against by the vigilance, firmness, and decidedly pacific dispositions of the two governments.” The proposal of Adams to disarm on the lakes was well received by Lord Castlereagh. He said that everything beyond what was necessary to prevent smuggling was “calculated only to produce mischief;” but he was cautious, and was inclined to look farther than to the pacific disposition which was manifested. As at Ghent, he still thought that the “lakes should belong to our party, thereby rendering armaments unnecessary.” Looking with suspicion to the advantage of the Americans in being nearer the lakes, he still thought that England as the *weaker* party should have controlled them, and that in order to preserve peace they should have been made a “large and wide natural separation between the two territories.” He feared that an engagement for mutual disarmament would give the United States too much advantage in case of war. To this Adams replied that the engagement would be in favor of Great Britain; that the

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<sup>1</sup> Instructions to U. S. Ministers, No. 8.

<sup>2</sup> Adams' Memoirs, Vol. 3. Also in Adams' despatches to Monroe.

United States would have her hands tied until the moment of actual war, and that it was impossible for war to arise suddenly without a condition of things which would give Great Britain sufficient time to get ready to build armaments on the lakes at the same time as the United States.

Lord Castlereagh proposed to submit the proposals to his government for its consideration, but after the conference had ended, Mr. Adams had little hope for even an arrangement to limit the force to be kept in actual service.<sup>1</sup> While Bathurst was the only real warlike man in the ministry, the apparent disinclination of Lord Castlereagh, who was probably better disposed than the rest of the ministry, did not seem a favorable indication. Adams felt that the British ministry suspected some strategic point to be at the bottom of the proposition. The "frank and unsuspecting confidence" in which the idea originated had not been appreciated. He desired that peace should be cemented by "that mutual reliance on good faith, far better adapted to the maintenance of national harmony than the jealous and exasperating defiance of complete armor." On March 21, he renewed the proposal to "mutually and equally disarm upon the American lakes," and, with the hope that it might be entertained in the same sincerely amicable spirit in which it was made, he emphasized the fact that there were abundant securities against the possibility of any sudden attack upon the colonies which the "guarded and cautious policy" of Great Britain might fear.<sup>2</sup>

But the debates in Parliament gave little evidence that the proposal would be considered. They were upon the principle of preserving peace by being prepared for war. An element in both countries was urging this policy, not because there was any danger of war, perhaps, but rather to keep up with other lines of development. Mr. Goulburn, who had been one of the British commissioners at Ghent,

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<sup>1</sup> Adams' Despatches, Jan. 31, 1816.

<sup>2</sup> No. 20 Despatches, Mar. 22.

wrote to Mr. Clay (March 8, 1816) as follows: "You are fighting the same battle in America that we are here, i. e., putting peace establishments on a footing not unbecoming the growth of population and empire in which they are to be maintained. It is impossible that either country should feel jealous of the other so long as the augmentation does not exceed the necessity of the case, and I have not heard an argument anywhere to prove that it does so exceed in either case. I can relieve your apprehensions as to the hostile movement of England in any part of the globe."<sup>1</sup> This was certainly a friendly statement of the case. Mr. Adams, however, did not take the same view of the matter. He was watching the speeches of the "Jingoes," and they were more than a nightmare upon his mind.<sup>2</sup> In a letter to Mr. Monroe on March 30 he said:

"In all the late debates in Parliament upon what they call their Military and Naval *Peace* Establishment the prospect of a new war with the United States has been distinctly held up by the ministers and admitted by the opposition as a solid reason for enormous and unparalleled expenditure and preparation in Canada and Nova Scotia. We hear nothing now about the five fir frigates and the bits of striped bunting. The strain is in a higher mood. Lord Castlereagh talks of the great and growing military power of the United States. The Marquis of Lansdowne, an opposition leader and one of the loudest trumpeters for retrenchment and economy, still commends the ministers for having been *beaten* into the policy of having a naval superiority upon the lakes. And one of the lords of the admiralty<sup>3</sup> told the House of Commons last Monday that bumboat expeditions and pinchbeck administrations would do no longer for Canada; that Eng-

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<sup>1</sup> Cotton : Corres. of Clay, p. 52.

<sup>2</sup> See Parlia. Debates, Vol. 33, p. 375.

<sup>3</sup> Mr. R. Gordon. In his speech of Mar. 25, he spoke of the growing American navy and the danger of hostility. He said: "Her 3-deckers now sail upon fresh water," and it was pinchback economy to keep down the British navy.



lishmen must lay their account for fighting battles in fleets of three-deckers on the North American lakes. All this is upon the principle of preserving peace by being prepared for war. But it shows to demonstration what will be the fate of the proposal for disarming."

Adams, in his letter to Lord Castlereagh on March 21, had shown the evil effects of an armed peace on the lakes.<sup>1</sup> Besides the expense, it would "operate as a continual stimulus of suspicion and of ill will" between the people on the frontier. He believed that the "moral and political tendency of such a system must be to war and not to peace." The condition of affairs was certainly not such as to encourage him to expect much consideration of his proposal.

The crisis in Parliament appears to have been passed soon after April 5. On that date Adams wrote that even the murmurs against large establishments had nearly ceased.<sup>2</sup> He was therefore much surprised, a few days later, when Lord Castlereagh requested an interview to inform him that the British Government was ready to meet the proposal of the United States "so far as to avoid everything like a contention between the two parties which should have the strongest force" on the lakes, and that they had no desire to have any ships in commission or active service except what might be needed "to convey troops occasionally." It appears that Lord Castlereagh was prepared to enter into an agreement upon the subject, but Adams did not feel like concluding the arrangement without further instructions. For this reason it was agreed that the negotiations be transferred to Washington, and that power and instructions should be sent to Mr. Bagot, the British minister to the United States. Adams wanted all the effects of a positive arrangement to begin at once, however. In fact, his letter to Monroe on April 15th shows that he understood that it was "agreed that no new or additional force should be commenced upon the lakes on either side for the present."<sup>3</sup> But no notes were exchanged

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<sup>1</sup> No. 20 Despatches.

<sup>2</sup> No. 20 Diplomatic Correspondence. (Despatches.)

<sup>3</sup> No. 20 Dip. Cor.

to this effect. The United States Government would probably, at this time, have been willing to let the force remain unchanged in order to stop the danger of further increase.<sup>1</sup> This evil was the first one to be avoided. Monroe referred to its "dangerous tendency" in a conversation with Mr. Bagot on May 2 and in a letter to Adams on May 3; and on May 21, before he had heard of the decision of the British Government to meet the proposal to disarm, in another letter to Mr. Adams he said that while that proposal expressed the views of the President, he would, nevertheless, be "satisfied to prevent the augmentation of the force, leaving it on both sides in the present state, and when it is considered that Great Britain has the ascendancy on Lake Ontario, which appears more immediately on Canada, and that the United States have it on Erie and Huron, which is important only in relation to the savages within our limits, it is not perceived on what ground it can be refused."

Late events on the lakes, however, soon made it apparent that more efficient measures should be adopted. On June 8, General Cass sent the news that British naval officers at Malden had been boarding American vessels, which passed there, in search of deserters. None had actually been taken, and the conduct was "presumed not to have the sanction of the British Government,"<sup>2</sup> but it was none the less a violation of the rights of the United States, and Adams was asked to call the matter to the early attention of the British Government.

After his interview with Mr. Adams on April 15, Lord Castlereagh was prompt in notifying Mr. Bagot of his power

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<sup>1</sup> 8 Instructions, pp. 46 and 63. Also see "America," Vol. 141. (Bagot to Castlereagh, May 3.)

<sup>2</sup> J. Graham (acting under Secretary Monroe), in a letter to President Madison, on June 25, threw the mantle of charity over the affair by saying that "possibly the measure was adopted more with a view of preventing their men from going on board United States vessels than with any serious intention of violating rights of the United States." (Madison Papers, Vol. 58.)

to act in the matter of arranging naval forces, as well as the matter of fisheries.<sup>1</sup> When the news reached America of the apparently sudden change in the attitude of the British Government there was some speculation as to the probable cause. Was the prosperity of England on the decline? Or was England acting from purely humanitarian motives? Or did she fear some new trouble? Dallas wrote President Madison, on June 26, that "Lord Castlereagh's overtures to arrange the question of armament on the lakes are probably suggested by the apprehension of a new commotion in Europe."<sup>2</sup>

By the early part of July Mr. Bagot had given Secretary Monroe information of the new powers which had been given him, but he did not enter into a full discussion. Monroe wrote Adams on July 8 that he had not yet learned the "nature and extent" of his power.<sup>3</sup> He had written to President Madison the day before stating that Bagot had informed him that he would enter upon the subject of naval forces after the question of fisheries had been arranged. In his own mind the adjustment of the lake armaments was first. Thinking some new ideas on the subject might have been suggested to the President's mind since he had approved the instructions sent to Adams, Monroe asked him for his sentiments, as well as directions in the matter.<sup>4</sup> Mr. Madison responded promptly on July 11. He did not see why Mr. Bagot should desire to suspend an arrangement of naval forces until the subject of fisheries had been disposed of.<sup>5</sup> He saw no connection between the two, and he said that "an immediate attention to the former is the more necessary, as it is said an enlargement of the British forces, particularly on Erie, is actually going on." He said it would be far better to suspend this enlargement till negotiations concerning it were concluded. To him it now seemed expedient to stipulate:

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<sup>1</sup> "America," Vol. 140. (Castlereagh to Bagot, April 23.)

<sup>2</sup> Madison Papers, Vol. 58, No. 74.

<sup>3</sup> 8 Instructions, p. 85.

<sup>4</sup> Monroe Papers, Vol. 5, July 7, No. 643.

<sup>5</sup> Monroe Papers, Vol. 15, No. 1969.

“(1) That no increase of existing armaments should take place.

“(2) That existing armaments be laid up.

“(3) That revenue cutters, if allowed at all, be reduced to the minimum of size and force.”

On the latter point he thought there might be advantage in communicating with Governor Cass, or with others who were acquainted with it. He asked, “What is the practice with respect to jurisdiction on the lakes? Is it common to both parties over the whole, or exclusive to each on its own side of the dividing line?” He suggested that the regulation of revenue cutters might be influenced by the question of jurisdiction.

Monroe, probably feeling that there was no chance of making any immediate arrangement with Mr. Bagot, had gone down to Loudoun county, Va., for a few days, to rest from the cares of public toil. It does not appear that he ever communicated with General Cass in regard to the question of revenue cutters. During the absence of Mr. Monroe in the country it seems that Mr. Bagot had given the matter of naval forces some consideration, and was more ready to discuss the subject. He wrote a letter to Mr. Monroe, and Mr. Graham sent it to the President on July 13 to get his opinion before Mr. Monroe should give his reply upon his return.<sup>1</sup> The substance of this letter is not found at the Department of State, but the following letter from Madison to Monroe, on July 21, will indicate that there had been further discussion of the subject:

“I have received yours of the 21 [mistaken date]. I hope Mr. Bagot, if willing to arrange in any mode a reciprocity on the lakes, will immediately issue instructions to discontinue augmentations, or preparations of force on the British side. The state of the size on our side will correspond without instructions, but a communication to the proper officers of what may be the British intentions will be

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<sup>1</sup> Madison Papers, Vol. 58, No. 91.

proper. There can be no inconvenience to Mr. Bagot in taking such a course. The measure suggested may be provisional till a more formal arrangement be made; or converted into a permanent arrangement as may be found best.”<sup>1</sup>

After Monroe’s return from Loudoun county, he had several conversations with Mr. Bagot upon the subject of the naval armaments upon the lakes, and he “thought at one time that they would agree;” but when Monroe put his ideas in writing, and sent the papers to Mr. Bagot informally, the latter would not subscribe his name to them.<sup>2</sup> As a reason, he intimated that there was some difficulty as to his powers. Monroe, seeing that there was “little probability of his being able to do anything immediately with Mr. Bagot” in relation to the fisheries, and to the reduction of naval forces, decided to leave again the hot miasmatic atmosphere of the capital and to return into the country. Under the circumstances, it seemed unnecessary for him to remain in Washington to wait for Bagot’s reply. The reply came soon after the departure of Mr. Monroe. Mr. Graham sent a copy of it to the President on July 29, and said: “This was forwarded to Mr. Monroe, and by his directions I now send it to you. His answer will be sent here by the next mail and is to be forwarded to you before it is sent to Mr. Bagot.” This reply was, doubtless, Mr. Bagot’s letter of July 26, which formally opened the negotiations at Washington by stating that in relation to the naval armaments on the lakes the Prince Regent, “in the spirit of the most entire confidence,” was ready to adopt “any reasonable system” which would contribute to economy, to peacefulness, and to the removal of jealousy. The “answer” which Monroe was to send “by the next mail” was, therefore, his letter of August 2, in which he submitted the “precise project” which was desired. The details of the proposal were given as follows:

“I have the honor now to state that the President is willing, in the spirit of the peace which so happily exists be-

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<sup>1</sup> Monroe Papers, Vol. 15, No. 1973.

<sup>2</sup> Madison Papers, Vol. 58, No. 107, July 29. (Graham to Madison.)



tween the two nations and until the proposed arrangement shall be cancelled in the manner hereinafter suggested, to confine the naval force to be maintained on the lakes on each sides to the following vessels, that is: On Lake Ontario to one vessel not exceeding 100 tons burthen and one 18 pound cannon, and on the upper lakes to two vessels of like burthen and force, and on the waters of Lake Champlain to one vessel not exceeding the like burthen and force; and that all other armed vessels on those lakes shall be forthwith dismantled, and likewise that neither party shall build or arm any other vessel on the shores of those lakes.

"That the naval force thus retained by each party on the lakes shall be restricted in its duty to the protection of its revenue laws, the transportation of troops and goods, and to such other services as will in no respect interfere with the armed vessels of the other party.

"That should either of the parties be of opinion hereafter that this arrangement did not accomplish the object intended by it, and be desirous of annulling it, and give notice thereof, it shall be void and of no effect after the expiration of —— months from the date of such notice."

Monroe stated that immediate effect might be given to this project by convention or by interchange of notes, or that if Bagot had to wait for the sanction of his government, a provisional reciprocal arrangement might be made. He also stated that, in case Mr. Bagot's powers were not adequate to do more, he would be willing to concur in the suspension of further augmentation or equipment of vessels for the lakes named.

Mr. Bagot offered no objection to any of the details of the proposition, but he announced his lack of authority to conclude definitely an agreement as to details without first submitting it to his government for its consideration of "points connected with the internal administration" of the provinces,

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<sup>1</sup> Annals of Congress, 15-1, Vol. 2, p. 1943, Appendix. See also American State Papers, Foreign Relations, Vol. 4, p. 202.

and as to the naval assistance necessary for the ordinary business of a peace establishment. In the meantime, he was willing to give effect to any arrangement, to which they might agree, for the mutual suspension of construction, equipment, and exertion on the lakes.

Monroe returned from the country on August 10, and he now proposed (August 12), in order that the arrangement should be equal, to adopt the detailed project of August 2, as a "provisional arrangement." But Bagot did not feel "authorized to make, even provisionally, any precise agreement as to the exact manner" of limiting the forces on the lakes. His power appeared to be limited, as Monroe wrote to Adams (August 13), "to a right to agree to suspend the further augmentation of the naval force on those waters, without fixing its maximum by any rational standard to the number of vessels which might be necessary."

Mr. Monroe stated to him, in his note of August 12, that if his power did not extend farther than this, the United States Government would, upon receiving a statement of the British force on the lakes, and an assurance that it would not be further augmented, confine the United States force to the same limits. Mr. Bagot agreed the next day to furnish the statement of the force as soon as he could get information upon the subject, and closed his note by saying: "I can in the meantime give you the assurance that all further augmentation of it will be immediately suspended."

Mr. Bagot stated in his note of August 6, that "the general coincidence of sentiment" between the two governments in regard to coming to some agreement upon the subject gave reason to hope that the several parts of the arrangement would be easily adjusted. But he was not satisfied at that time to make such a large reduction as was proposed by the note of Mr. Monroe containing the views of the President. Concerning this note, Mr. Bagot, on August 12, wrote to Lord Castlereagh as follows:

"On examining the draft which I received from him, I found, that besides a proposal for a much larger reduction

of the Naval Force than seemed compatible with the ordinary business of a Peace Establishment, it contained certain restrictions as to the employment of the Vessels to be retained, which appeared to me to have some object in view beyond the principal . . . one professed by the American Government. I, therefore, in returning the draft to Mr. Monroe, carefully avoided entering into any discussion whatever of the terms. . . . It is distinctly understood between Mr. Monroe and myself, that if, upon the receipt of my Letter by the Commander of His Majesty's Naval Forces, any of the armed vessels now building, shall be in that state of progress in which they cannot be laid up or dismantled without injury to the materials it shall be permitted to complete them so far as is necessary for their preservation."<sup>1</sup>

When Lord Castlereagh received the above letter the members of the cabinet were scattered, and the consideration of the matter was laid over till they could meet.<sup>2</sup>

Since the specific proposition had to be referred to Lord Castlereagh, Mr. Monroe thought it probable that the conclusion of the negotiations would revert to Mr. Adams. In his letter of August 13 to Adams<sup>3</sup> he spoke of the obvious advantage of this, as he (Adams) was "already authorized to treat on other important subjects." Adams was not inclined to see any advantage in it. It came in the nature of another surprise to him. When he received Mr. Monroe's letter, he appears to have been inclined to question the sincerity of the existing cabinet, whose policy appeared to him to be one of subterfuges, of refusals to negotiate, "or of expedients having all the features of refusal except its candor."<sup>4</sup> He was tired of delays and surprises and uncertainties upon this subject. It was a jugglery of "now you see it, and now you don't," and he feared that the Americans were the credulous

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<sup>1</sup> "America," Vol. 142, Letter No. 24.

<sup>2</sup> "America," Vol. 140.

<sup>3</sup> 8 Instructions, p. 94.

<sup>4</sup> 21 Dip. Cor., No. 56.

auditors who had been made fools in the game. When on January 25 he made his proposal "for disarming, or at least for limiting armaments upon the lakes," he was convinced from the manner in which it was received that it would not be accepted. But in April "he was assured by Lord Castlereagh that the government was disposed fully to meet the proposition, and that Mr. Bagot should immediately be authorized to enter into formal stipulation for the purpose. And as it now appeared probable that Bagot's power would terminate in a reference back to his own government, Adams was led to suspicion that England was simply amusing the United States, while preparing her defenses. He wrote Monroe, September 27, that "while Mr. Bagot was negotiating and receiving your specific proposition to be transmitted here, 52,000 tons of ordnance stores have been dispatched to Canada with the avowed purpose of arming their new constructed forts, and new built ships upon the lakes." Monroe agreed with Adams (November 14) that it appeared that the British policy was to amuse,<sup>1</sup> and was aware of the supply of cannon and munition of war to Canada, but his recent communication with Mr. Bagot gave him more confidence in the sincerity of the British Government. By the close of the year there was more evidence to give assurance of good intentions and growing promptness. The effect of this new disposition in preventing actual conflict on the border may here be noticed.

On August 29, Mr. Adams had called Castlereagh's attention to the improper conduct of the commander of the British armed vessel *Tecumseh*, in permitting men from his vessel to board several United States vessels upon Lake Erie in an improper manner.<sup>2</sup> Castlereagh, fully "persuaded that measures no less reciprocal" would be taken by the United States, at once issued positive instructions to the civil, military and naval authorities in North America to discourage by every means such proceedings in the future, and to pur-

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<sup>1</sup> No. 8 Instructions.

<sup>2</sup> No. 21 Dip. Cor., Sept. 18.

sue a conduct showing an amicable disposition. Even before Adams had presented this complaint to Lord Castle-reagh, other similar acts had been committed, and it was inferred that they were "in compliance with a system" which the British commanders in Canada thought it their duty to pursue.

On July 26, General Cass wrote to Monroe (General McComb also wrote to the Secretary of War) complaining of the improper conduct of a British officer of the British armed vessel *Huron* in boarding an American vessel, the brig *Union*, and searching her on the strait near Malden. It had also been represented to Cass that the act was supported by officers at Malden, who placed cannon in position to bear on the American vessel.<sup>1</sup> Secretary Monroe thought (as Adams was also convinced in the case of the *Tecumseh*) that the British officers had mistaken the policy of their government. This was doubtless true. On August 14 he called the attention of Mr. Bagot to this act of irritation and injustice, with full confidence that he would take measures to prevent a similar occurrence.<sup>2</sup> The latter was justly aware of the dangerous tendency of these acts, and proceeded at once to have the Governor General of Canada and the chief of the naval forces on the lakes direct inquiry into the matter.<sup>3</sup>

On November 18 he informed Secretary Monroe that no cannon had been placed in position at Fort Malden, as was

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<sup>1</sup> No. 8 Instructions, p. 99.

<sup>2</sup> 2 Notes from State Dept., p. 164.

<sup>3</sup> Monroe, now apparently for the first time, informed Cass of the President's discussions with Bagot, resulting in a "provisional arrangement, for the present to suspend the further augmentation of the naval force of Great Britain in those waters, and to confine our force within the same limit." He also told Cass that Bagot expected an enlargement of his power. He sent him in confidence a copy of the correspondence which had passed. He did this because it would be satisfactory and useful for him to know it. Under a similar injunction of "confidence," he was authorized to communicate correspondence to Major General McComb. He was also advised to consult with the Governor of Canada himself after this. (Aug. 15.) (16 Domestic Letters, p. 322.)



represented, but that it appeared from the reports sent him that the officer commanding on Lake Erie had "misconceived the nature of his instructions" and considered that all vessels passing under Fort Malden should be visited.<sup>1</sup> The commander-in-chief on the lakes revoked such orders at once, and every means was taken to prevent a similar occurrence. The orders sent by the influence of Lord Castlereagh had also reached Canada by this time, and the consequent restraint on the conduct of the officers on the lakes would tend to secure peace and tranquillity in that quarter. All these measures doubtless produced the salutary effect intended by them.<sup>2</sup>

Mr. Madison was highly pleased with the promptness shown by Mr. Bagot, and at the prompt measures taken at his instance by the commanders in Canada and on the lakes. Mr. Bagot was assured November 29 that corresponding orders had been given and would be repeated and enforced by the United States Government.

In the meantime (November 4) Mr. Bagot had furnished the Secretary of State with "an account of the actual state of His Majesty's naval force upon the lakes,"<sup>3</sup> and stated that

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<sup>1</sup> No. 9 Notes to State Dept.

<sup>2</sup> No. 2 Notes from State Dept.

<sup>3</sup> The British report had been prepared September 1, 1816. It gave the following statement of the British force on the lakes :

"ON LAKE ONTARIO :

*St. Lawrence*, can carry 110 guns, laid up in ordinary.

*Psyche*, can carry 50 guns, laid up in ordinary.

*Princess Charlotte*, can carry 40 guns, laid up in ordinary.

*Niagara*, can carry 20 guns, condemned as unfit for service.

*Charwell*, can carry 14 guns, hauled up in the mud, condemned likewise.

*Prince Regent*, can carry 60 guns, in commission, but unequipped. . . .

*Montreal*, in commission, carrying 6 guns ; used merely as a transport.

*Star*, carrying 4 guns, . . . unfit for actual service.

*Netley*, schooner, no guns ; attached for most part to the surveyors. . . .

Some row boats, capable of carrying long guns ; two 74-gun ships on the stocks, and one transport of 400 tons.

further augmentation was suspended until the British Government reported upon the proposal of August 2. Mr. Monroe at once (November 7) furnished the former with the statement of the United States naval force in the same region,<sup>1</sup> and had orders given "to prevent any augmentation of it be-

ON LAKE ERIE :

*Tecumseh* and *Newark*, carrying 4 guns each.

*Huron* and *Sauk*, carrying 1 gun each.

Principally for carrying stores from place to place.

ON LAKE HURON :

*Confidence* and *Surprise*, schooners, which may carry one gun, and are used for purposes of transport only.

ON LAKE CHAMPLAIN :

12 gun-boats, ten of which are laid up in ordinary, and the other two (one of which mounts 4 guns, and the other 3 guns) used as guard boats. Besides the above, there are some small row boats, which are laid up as unfit for service.

Keel, stem, and stern-post of a frigate laid down at the Isle aux Noix."

<sup>1</sup> The report which Mr. Monroe furnished Mr. Bagot gave the following vessels : { "*America*," Vol. 142, Nov. 9.)

ON LAKE ONTARIO :

Brig *Jones* (18 guns). Retained for occasional service.

Schooner *Lady of the Lake* (1 gun). Employed in aid of the revenue laws.

Ship *New Orleans* (74 guns). On the stocks, building suspended.

Ship *Chippewa* (74 guns). On the stocks, building suspended.

Ships *Superior* (44 guns), *Mohawk* (32 guns), *General Pike* (24 guns), *Madison* (18 guns); and the brigs *Jefferson* (18 guns), *Sylph* (16 guns), and *Oneida* (18 guns). Dismantled.

Schooner *Raven*. Receiving vessel.

15 barges (each, 1 gun). Laid up for preservation.

ON LAKE ERIE :

Schooners *Porcupine* and *Ghent* (each, 1 gun). Employed in transporting stores.

Ship *Detroit* (18 guns), and brigs *Lawrence* (20 guns), and *Queen Charlotte* (14 guns). Sunk at Erie.

Brig *Niagara* (18 guns). Dismantled at Erie.

ON LAKE CHAMPLAIN :

Ships *Confiance* (32 guns), and *Saratoga* (22 guns); brigs *Eagle* (12 guns), and *Sinnet* (16 guns); the schooner *Ticonderoga* (14 guns); and 6 galleys (each, 1 gun). All laid up at White Hall.

yond the limit of the British naval force on those waters." Mr. Bagot noticed that no force for the upper lakes was given in the statement sent him, but was informed that it had been included in the force mentioned for Lake Erie. It appears that there was no further correspondence between Bagot and Monroe concerning the matter.

The reciprocal and definite *reduction* of the naval force on the lakes did not occur until after Monroe had become President the next year. The Prince Regent having, in the meantime, agreed to the proposition of August 2, 1816, Castlereagh so informed Mr. Bagot on January 31, 1817. Mr. Bagot notified Mr. Rush (who was acting as Secretary of State until Mr. Adams could arrive from London), and on the 28th and 29th of April, 1817, a formal agreement was entered into by exchange of notes. It was practically the same as the proposed project of August 2, and could be annulled by either party's giving six months' notice. The British Government had already issued orders to the officers on the lakes, directing that the limited naval force should be restricted to such services as would "in no respect interfere with the proper duties of the armed vessels of the other party." By the request of Mr. Rush (April 30), orders to the same effect were issued on May 2 by Mr. Crowninshield, Secretary of the Navy, to the American commanding naval officers at Erie, Pa., Sackett's Harbor, N. Y., and Whitehall, N. Y. By these orders the schooner *Lady of the Lake* was assigned to Lake Ontario, the schooners *Porcupine* and *Ghent* to the upper lakes, and the galley *Allen* to Lake Champlain.

The agreement between Rush and Bagot became effective at once upon the exchange of notes. There is no evidence that Great Britain gave to it the formalities of a treaty, and it was not till April 6, 1818, that President Monroe formally notified the Senate of the United States of the arrangement, and submitted to its consideration whether this was "such an arrangement as the Executive is competent to enter into by the powers vested in it by the Constitution, or is such a one as requires the advice and consent of the Senate, and, in the

latter case, for their advice and consent, should it be approved." The approval and consent of the Senate was given on April 16, with no dissenting vote, and it was recommended that the arrangement be carried into effect by the President. The Agreement was proclaimed by President Monroe on April 28, and appears in the *National Intelligencer* of April 30, as follows:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.  
A PROCLAMATION.

Whereas, an arrangement was entered into at the city of Washington, in the month of April, in the year of our Lord one thousand eight hundred and seventeen, between Richard Rush, Esq., at that time acting as Secretary for the Department of State of the United States, for and in behalf of the Government of the United States, and the Right Honorable Charles Bagot, His Britannic Majesty's envoy extraordinary and minister plenipotentiary, for and in behalf of His Britannic Majesty, which arrangement is in the words following, to wit:

"The naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

"On Lake Ontario, to one vessel, not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

"On the upper lakes, to two vessels, not exceeding like burden each, and armed with like force.

"On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

"All other armed vessels on those lakes shall be forthwith dismantled and no other vessel of war shall be there built or armed.

"If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the

other party, it shall cease to be binding after the expiration of six months from the date of such notice.

"The naval force so to be limited shall be restricted to such service as will in no respect interfere with the proper duties of the armed vessels of the other party."

And whereas the Senate of the United States have approved of the said arrangement and recommended that it should be carried into effect, the same having also received the sanction of His Royal Highness, the Prince Regent, acting in the name and on the behalf of His Britannic Majesty:

Now, therefore, I, James Monroe, President of the United States, do, by this my proclamation, make known and declare that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded and confirmed, and is of full force and effect.

Given under my hand, at the city of Washington, this twenty-eighth day of April, in the year of our Lord, one thousand eight hundred and eighteen, and of the independence of the United States the forty-second.

By the President: JAMES MONROE.

JOHN QUINCY ADAMS, Secretary of State.

It was the impossibility of getting the vessels from the lakes to the sea which made it necessary to dismantle them on the lakes. This work appears to have been done promptly.<sup>1</sup> Soon only dismantled or uncompleted hulks were left as a reminder of the former warring fleets. In fact, the forces on each side declined to "almost complete disappearance." By 1820, feelings of danger had decreased so far that the House of Representatives refused to consider a resolution which proposed a western depot for arms "convenient to those points which are most vulnerable to the enemy."<sup>2</sup> In 1822, Mr. Cooke, in the House, understanding that most of the vessels on the lakes were sunk and "none fit for service,

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<sup>1</sup> Niles' Register, July 12, 1817, p. 320.

<sup>2</sup> Annals of Congress, Jan. 4, 1820.



though it seemed that the salaries of officers and men did not have a corresponding decline," desired an inquiry into the subject.<sup>1</sup> By 1825 public vessels had practically disappeared.

The "era of good feeling" had now taken the place of quarrels, oppression and misunderstanding, and peace began to exist in fact as well as in theory. The prompt orders sent out by Castlereagh to the naval officers on the lakes, suspension of the construction of vessels in that quarter, and, finally, the agreement to limit the force of each side on the lakes, increased the confidence of the Americans in the intentions of their British kin. It was a fortunate circumstance that the heads of affairs in both countries were not men with stronger prejudices than they had reason. Castlereagh was probably in advance of public opinion in England in making favorable concessions to the United States and in trying to soften old animosities, and Bagot, though very cautious, was inclined to any reasonable measure for securing friendly relations. Both were held in high esteem by the American people. Mr. Bagot was highly honored at Washington. He was much liked by both Madison and Monroe. He and his wife took pleasure in spending several days of the autumn at Montpelier, the home of Mr. and Mrs. Madison.<sup>2</sup> The scene around the dining table in that old Virginia home may be typical of the new feeling which was beginning to grow up. After Mr. Bagot's return to England, Lord Castlereagh showed great satisfaction at the friendly feeling toward him in America, and said it was desired to send him back if his health would allow.<sup>3</sup> It was felt to be a time for the adjustment of questions that contained the seed of future misunderstanding or controversy, and for awhile the Americans hoped to see England yield on the question of impressment, as well as on others of great moment in their bearings upon harmony between the two nations.

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<sup>1</sup> Benton's Abridgement of Debates, Vol. 7.

<sup>2</sup> Madison Papers, Vol. 60, No. 65, Oct. 17.

<sup>3</sup> 23 Despatches. (Dip. Cor., Rush to Adams.)

Old causes of animosity were being removed at home. Monroe made a visit to the North and West, which helped to remove party and national prejudices. When he completed his journey from Ogdensburg to Detroit and returned to Washington in September he had broad views of the future of his country. In his message of December, 1817, he said that "our own people are the barrier on the lakes," and great fortifications are unnecessary. He hoped that a just, candid and friendly policy would enable us to preserve amicable foreign relations. Society appeared to be weary of strife. The dangers of future quarrels were even less than was thought by some who were seeking to guard the republic against future occasions of strife. Mr. Madison thought that if the question of impressment was settled, a remaining danger to a permanent harmony would lie in the possession of Canada.<sup>1</sup> On November 28, 1818, he wrote Monroe that "the only reason we can have to desire Canada ought to weigh as much with Great Britain as with us. In her hands it must ever be a source of collision which she ought to be equally anxious to remove." He thought that even if Canada should not become independent in time, she could be of no value to England when at war with the United States, and would be of equal value when at peace. But time has proven that with the safeguards which the spirit of the fathers provided there has been little danger from that source.

Anglo-American relations for twenty years after the Agreement of 1817 were far more cordial than they had ever been before. The commercial convention of 1815 was favorable to the United States, but it had been made for only four years. In 1818 it was extended for ten years more.

It was feared for awhile that Astoria, in the Oregon country, would be a source of trouble. The British had taken possession of this post during the war of 1812, and Mr. Monroe announced in July, 1815, that the United States intended to reoccupy it. When the *Ontario* sailed from New York

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<sup>1</sup> Madison's Works, Vol. 3, p. 42.

in October, 1817, on a voyage to the Pacific coast with this end in view, Mr. Bagot remonstrated, but the British Government did not stand with him, and on October 6, 1818, Astoria was surrendered. Mr. Bagot's successor found no diplomatic difficulties in his way, and Mr. Rush, who had replaced Mr. Adams at London, was treated with great respect there.

Of course, the old feeling of enmity did not die at once. The loyalists who went from the United States to Canada during the revolution, and received lands there, had an aversion to Americans which was not diminished by the invasion of Canada at the beginning of the War of 1812. It was natural for the Americans to return this hostile feeling, and some of the insolvent farmers around Lewiston might have been glad of a chance for another invasion.<sup>1</sup> The only fault that English travelers found with the Americans, however, was that they were inclined to "blow their horn too much." They vaunted over what the British called "a puny war."

In June and July, 1822, commissioners settled upon the details of the boundary line between Canada and the United States from the St. Lawrence to Lake Superior, thus lessening the probabilities of misunderstanding in that quarter. When Canning came to the head of the Foreign Office at the death of Castlereagh in 1822 he was much more polite than he had been before the war in his conversation with the American ambassadors. In 1823 he drew Great Britain closer to the United States. The interests of the two countries were the same in the South American republics.

In 1826, relations had become somewhat tangled. An English order in council kept the United States from trading with the West India ports. At the same time the British authorities in Canada were building canals to compete with the United States in securing the trade of the lakes. Some went so far as to advise that in order to deprive the Ameri-

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<sup>1</sup> Howison: Sketches of Upper Canada and the United States. 1820.

cans of a means of attack upon Canada, and in order to make Great Britain mistress of the lake trade, the canals should be made large enough for steamers suited to the lakes and "capable of being turned into military purposes without any expense."<sup>1</sup> This proposal to secure for Great Britain the commercial and military possession of the lakes was not the result of any immediate danger to the security of Canada, nor to her interests except so far as the Erie canal, carrying the waters of the lake toward the Atlantic, had opened the door between New York city and the commerce of the rich and developing Northwest. The United States was not looking for war.

With the great increase in the population along the southern shores of the lakes, and with the more friendly intermingling of the two peoples upon its waters, the relations with Great Britain were felt to be entirely safe. In 1826, Fort Shelby, at Detroit, was demolished and the garrison was removed. By 1827, when Canning died, affairs with England were even more satisfactory. The convention of 1818 was continued indefinitely. In 1830, when the United States asked the West India trade as a privilege, the interdict was removed by Great Britain. A permanent direct trade in American bottoms was also established between England and the United States.

Statesmen could look forward to continued cordial relations and a gradual growth of the spirit of reciprocity. Strained relations were not anticipated. War was thought of only as a remote possibility. In 1830 it was argued in the House of Representatives that in case of any future war our main defense of the long northern frontier must be our naval force, but it does not seem that any war was expected. When the question of fortifications was being considered in Congress in 1836, Mr. Cass, the Secretary of War, thought that under existing conditions, and when we were not hunting war, it seemed "altogether inexpedient to construct expen-

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<sup>1</sup> Report of Canadian Archives. 1890. Lieut. Col. By to Gen. Mann, July 13, 1826.



sive fortifications" along the lake frontier, which, he said, "requires no permanent defenses."<sup>1</sup>

What the lakes needed was not a fleet of naval vessels, nor a cordon of shore defenses, but improved harbors for the increasing commercial fleet. In 1816 the first steamer, the *Ontario*, was built on Lake Ontario at Sackett's Harbor. She began to ply in April, 1817. In 1818 the first steamer on Lake Erie, the *Walk-in-the-Water*,<sup>2</sup> was launched near Black Rock, below Buffalo. From 1818 to 1824 there was a very small number of vessels employed on the lakes. From 1824 to 1827 there were harbor improvements on Lake Erie, which produced a stimulus on commerce. A new stimulus was given in 1825 by the completion of the Erie canal,<sup>3</sup> which had been commenced at Rome on July 4, 1817. There was a gradual increase in commerce from this time forward. Many new steamers were built.<sup>4</sup> Two new boats were built in 1824, and three more in 1825. By 1832 there were four others. In 1833, twelve additional ones were completed. In a few years more there were fifty steamers from Buffalo to the upper lakes. Chicago was first reached by a vessel from the lower lakes in 1834. Down to this time all the boats that went beyond Cleveland were primarily engaged in carrying provisions to the new settlers. After 1835 the transportation of western products to the East became more prominent. The first cargo of grain from Lake Michigan reached Buffalo in 1836. In the same year a company was organized in Chicago to facilitate the transportation of goods from St. Louis to that city, and the bulk of the western products that found their way east by the lakes constantly increased.<sup>5</sup>

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<sup>1</sup> House Reports, Exec. Doc. No. 243, 24th Cong., 1st Session.

<sup>2</sup> An account of its entrance to Detroit is found in an "Account Book" of the Collector of Customs at that place in 1818.

<sup>3</sup> The Oswego canal was also completed in 1828, and the Welland canal in 1829.

<sup>4</sup> Exec. Docs., 27-1, Vol. 1, p. 191 (1841-2). Also, see Senate Doc. 112, Aug. 25, 1852. Also, see J. W. Hall's "Record of Lake Marine." Detroit, 1878.

<sup>5</sup> Wis. Hist. Coll., Vol. 13, 1895, article by O. Libby on the "Significance of the Lead and Shot Trade." Also, see Exec. Doc. 68, 26-1, Feb. 1840. Also, Senate Doc. 140, 26-1, Vol. 4, p. 19. Also, De Bow's Review for January, 1846.



## V.

# THE CANADIAN REBELLION AND BOUNDARY QUESTIONS.

### TANGLED RELATIONS AND THREATENED ARMAMENTS.

The period after the close of the second war with England was one of national and industrial development. The army of active and enterprising people continued to advance westward, and the region along the lake shores which, at the time of the war, had been "covered with dark and gloomy forests, filled with hostile savages," was gradually claimed for cultivation and civilization. The tribes which Tecumseh struggled to form into a great confederacy retreated before the emigrants that pushed their way over the Appalachian mountains. Silently and gradually there grew up a commerce which far surpassed the early fur trade. The demand for a better communication between East and West<sup>1</sup> was finally answered in the construction of the Erie canal and the increased use of the lakes for transportation. This in turn led to the more rapid growth of the Northwest, and the waters which had once been the scene of the most brilliant naval triumphs which adorn our history were transformed into a commercial highway to carry vast products to the ocean.

It does not appear to have occurred to the governments that with the increased settlements in the West internal troubles might arise on either side of the lakes and make it necessary to protect the frontier from lawless violations of neutrality. This very condition of affairs, however, was brought into existence in connection with the Canadian Rebellion of 1837-38, when secret lodges of sympathizers held

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<sup>1</sup> See Niles' Register, Feb. 22, 1817, p. 423.

meetings in several of our lake cities, and, by readiness to rush blindly into conflict, endangered our peace with England. Some joined these lodges because of a hatred toward Great Britain, which had its origin in the Revolution of 1776. Others sympathized with the insurgents of Upper Canada simply because they represented the weaker side. Still others believed the rebellion was a struggle for liberty in Canada.

The Canadian insurgents received more sympathy at Buffalo than at any other point, on account of the central position of the place and owing to the fact that it had a large floating population who were out of work. Some of the newspapers published stirring editorials, which were not intended to calm misdirected sentiment. When Mackenzie, the leader of the rebellion, came to Buffalo on December 10, 1837, demonstrations were arranged in his honor, and spread-eagle "orators" regaled the crowds with mendacious speeches. Several of the rabble joined the rebel army. An "Executive Committee" was appointed at a popular meeting to look after the safety of the city. There was some fear that the Canadians would make an attempt upon the city in revenge for the sympathy shown the insurgents. On December 21, Secretary of State Forsyth gave instructions to the United States District Attorney to enforce the law in preserving neutrality. Nevertheless, several of the rabble joined the insurgent forces—some for expected spoils, some for fun, and some to kill time. The son of old General Van Rensselaer joined because he aspired to be a "Sam Houston."

During the latter part of December, 1837, the insurgents were gathered at Navy Island, on the Canadian side of the Niagara river, just above the Falls. Mackenzie represented it as the seat of government for Upper Canada, and issued his proclamation declaring in favor of free trial, free elections, free trade, free education, free St. Lawrence, free western lands and freedom from weary prayers to lordlings. His bait did not catch as many Americans for his army as he had hoped, though it increased the sympathy for his cause.

Governor Sir Francis Bond Head, of Canada, soon issued

a call for troops to stop this menace to the Government of Canada. It was found that Mackenzie had chartered the steamer *Caroline*, owned by American citizens, to carry supplies from Schlosser, on the American side,<sup>1</sup> to the insurgents at Navy Island. On December 29 a British expedition crossed over to the Schlosser wharf in boats, and, after some force, secured the *Caroline*. Her decks were cleared, and she was taken to the middle of the river, where she was set on fire and allowed to drift toward the falls. During the capture one American, Amos Durfee, was shot and left dead on the wharf. In death he received greater honors than he had ever received in life.<sup>2</sup> His body was displayed on the piazza of the city hall in Buffalo, and his funeral was extensively advertised by a panorama of placards illustrated with coffins. It was an appeal to sentiment. Inflammatory speeches were made to the excited multitude to persuade them that the eagle had been insulted.

As the news of the *Caroline* massacre spread there were mutterings of war. The danger of filibustering expeditions from the United States was increased. Some young men of Buffalo were especially anxious to get hold of a royalist sheriff, McLeod, who had made threats against the people of that city.<sup>3</sup> Some who had been passive sympathizers with the insurgents before, now became active. The manager of a Detroit theatre announced a benefit each week for the "Patriots." Some urged a war with England. A member of the "Executive Committee" of Buffalo was reported to have said that he would have a war out of the Canada disturbance if possible.<sup>4</sup> The country waited in suspense to see what course the government would pursue. There was a false report that Mr. Fox would demand his passports. Stocks in New York fell  $1\frac{1}{2}$  per cent.<sup>5</sup> On January 7 the Buffalo Daily

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<sup>1</sup> Schlosser Wharf is between Navy Island and Niagara Falls.

<sup>2</sup> Lucy M. Hawes: *Buffalo Fifty Years Ago* (pamphlet, 1886).

<sup>3</sup> *Detroit Free Press*, Jan. 6, 1838.

<sup>4</sup> *Buffalo Commercial Advertiser*, Jan. 23, 1838.

<sup>5</sup> *Buffalo Commercial Advertiser*, Jan. 17.

Star said that notwithstanding the Sabbath stillness, "the whole frontier from Buffalo to Lake Ontario now bristles with bayonets." The ferries were stopped. The two peoples along the Niagara were watching each other.

There were rumors of preparation for invasion from Canada. The people of eastern Chautauqua county were scared by the report started by a drunken man that 3000 Indians were coming from Canada.<sup>1</sup> Conspiracies against the peace of Canada were also being hatched all along the line. "General" Sutherland, who had enlisted in the insurgent cause at Buffalo, went west to incite the people.<sup>2</sup> At Detroit he obtained possession of several boats, with supplies. Muskets were taken from the jail and from the door adjoining the United States Marshal's office.<sup>3</sup> Sutherland began to issue his proclamations from Bois Blanc Island, but his air-castles fell when the *Anne*, commanded by the Irish-Canadian, Theller, was captured near Malden on January 10. The cause of the "Patriots" was clearly on the wane by January 13, when the cannonading at Navy Island ceased and the insurgents evacuated the place.

In the meantime an effort was being made on each side to prevent further trouble. A meeting was held in Buffalo to counteract the bad effect of the previous meetings. It was in favor of non-interference in the affairs of Canada. It was declared that this was the safe policy to prevent British steam frigates from appearing upon the lakes, and the best plan to follow in order to prevent an Anglo-Mexican alliance. The Government at Washington was prompt in its action. It objected to the seizure of the *Caroline*, but there was a good understanding with the British minister.<sup>4</sup> Act of January 9 provided means of preserving peace on the border. The President issued a proclamation enjoining neutrality, and Secretary Woodbury requested the commander of

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<sup>1</sup> *New York Express*, Jan. 3, 1838.

<sup>2</sup> Dent : Upper Canadian Rebellion, Vol. 2, p. 224.

<sup>3</sup> R. B. Ross : Patriot War. (*Detroit News*, 1890-91.)

<sup>4</sup> Philadelphia *U. S. Gazette*, Jan. 5, 1838.

the cutter *Erie* to go to Buffalo to aid in enforcing the laws.<sup>1</sup> General Scott was sent to the frontier, and Buffalo became a military post. His moderation did much to calm the excitement on the border. When the British general, McNabb, had Captain Drew to anchor two schooners in American waters to intercept the passage of the *Barcelona*, in which it was believed the insurgents intended to depart for the Michigan frontier, Scott objected, but, at the same time, he arranged to charter the *Barcelona* for his own use, and by keeping a watch on other vessels, he interfered with movements hostile to the Canadian Government. The insurgents tried to secure the *Virginia*, but they could not get anyone to give bonds for it. It was also suggested by sympathizers in Buffalo that they get the steamer *Peacock* at Erie, but it was feared "that the cutter and steamboats in the service of the United States would interfere."<sup>2</sup> General Van Rensselaer began to feel that his aspirations to become a "Sam Houston" had very little chance of being realized, and he soon went east to see his "beloved intended."<sup>3</sup>

The prompt action of the United States Government in preventing the "Patriots" from organizing and from securing lake vessels had hardly been expected by them. Donald McLeod wrote: "The course which your government has pursued towards the Patriots seems to me uncalled for, especially after the repeated insults and aggressions by the British authorities." McLeod accused the British of having three armed vessels on Lake Erie in violation of their agreement with the United States Government.<sup>4</sup> This and other things led him to "expect that the United States Government would permit the Patriot army to proceed peacefully through its territory," and, "as in the case of Texas," let them alone to manage their own affairs.

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<sup>1</sup> Buffalo *Commercial Advertiser*, Jan. 12, 1838.

<sup>2</sup> Patriot Letters (in Buffalo Historical Library). Morgan to Ajt. Gen. McLeod, Jan. 28, 1838.

<sup>3</sup> Patriot Letters. Henderson to McLeod, Feb. 4, 1838.

<sup>4</sup> Patriot Correspondence. McLeod to Thompson, Feb. 16, 1838.



Notwithstanding the action of the government, however, small bands of insurgents continued to make attempts upon Canada.<sup>1</sup> McLeod was defeated on Fighting Island in the Detroit river on February 25. Another band was defeated on Point-Pele Island in western Lake Erie.

The mutterings of war increased. The United States Government had demanded redress "for the destruction of property and assassination of citizens of the United States on the soil of New York at Schlosser." Public sentiment was worked up to a high pitch, especially after the British Government showed no disposition to make amends for what appeared to be clearly a violation of international usage.<sup>2</sup> The danger of filibustering expeditions from the United States to assist the "Patriots" still existed.

Governor-General Head, of Canada, lost his equilibrium, and made matters worse. He wrote that almost every United States arsenal from Lake Champlain to Lake Michigan had been broken open in order to enable American citizens to invade Canada.<sup>3</sup> He was inclined to believe the stories of Sutherland, in the Toronto jail, concerning the aim of the United States to get Canada as they had Texas. He wanted greater defenses for Canada, and in this he was opposed by the home government. He took occasion to ventilate his feelings so freely that Lord Glenelg wrote that he should abstain from conduct or language calculated to inflame passion and endeavor to "diffuse a better and more friendly feeling toward the neighboring states."

The border feeling was further aggravated by the controversy in Maine over the disputed boundary. The action of lawless men from the British provinces in cutting timber upon the territory in dispute, and in seizing an agent whom the government of Maine sent to investigate the affair, led to a sharp correspondence between the Governor of Maine

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<sup>1</sup> 19 Notes to State Dept.

<sup>2</sup> Buffalo *Commercial Advertiser*, Jan. 8, 1838.

<sup>3</sup> Head's Narrative, p. 399. Head to Fox, Mar. 3, 1838.

and the New Brunswick authorities. It looked as if the people were treading upon smouldering coals which were at any time liable to be blown into a blaze. There was great danger of a local clash of arms.

Some of the frontier characters were determined to harass the British authorities at every opportunity. On the night of May 29 the *Sir Robert Peel*, having among other passengers Colonel Frasher, a British custom-house officer, while passing the Thousand Islands was burned by the notorious Bill Johnson and his associates, who yelled to the half-dressed passengers on the shore, "Remember the *Caroline*, "Remember the *Schlosser*."

Such acts could not go on always and peace exist. They were a source of annoyance both to Canada and the United States, and if continued would necessitate a standing naval and military force in that quarter, and this was opposed to the policy and habits of the American Government. The need of a larger force on the lake frontier had already been under consideration.

On May 28, 1838, the House of Representatives passed a resolution instructing the Committee on Naval Affairs to inquire into the expediency of providing for the construction of an armed steam vessel on Lake Erie. This resolution was referred to the Secretary of the Navy, and on June 8 he wrote the chairman of the committee as follows:

"In reply to your letter of the 5th inst., enclosing resolution of House of Representatives of May 28 . . . As the objects of the resolution required the participation of the Treasury and War Departments, as well as the Navy, the subject was brought to the consideration of the President, as well as the heads of those departments; upon which it has been concluded, with the approbation of the President, to hire or otherwise procure two steam vessels, one for Lake Erie and one for Lake Ontario, for the purposes mentioned in the

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<sup>1</sup> Capt. Van Cleve : *Reminiscences of Early Steamboats*, etc., p. 47. (Capt. Van Cleve's book is in manuscript and may be seen at the Buffalo Historical Library.)

resolution, and to be so manned and equipped as not to interfere with existing treaties. Measures will be at once adopted for carrying this arrangement into effect, which it is believed may be done under existing appropriations.”<sup>1</sup>

After these precautionary measures, further action by Congress was considered unnecessary.

The British authorities had also begun to make some naval preparation. They had temporarily hired some boats for the expedition against the *Caroline*. They had also hired two or three schooners in the early part of 1838, and armed them to prevent an invasion from Navy Island, but these were probably not retained after the danger was past. During the summer of 1838 it appears that the authorities in Upper Canada employed “one or more steamers, hired for the purpose, and manned with a certain number of troops, to cruise on Lake Erie against apprehended invasions” of unlawfully organized bands from the United States. According to Colonel Worth, the Canadian authorities also hired several armed steamers and barges after the burning of the merchant vessel *Sir Robert Peel* in 1838 to cruise against the “Patriots” on the St. Lawrence and on the Canadian side of Lake Ontario.

Notwithstanding these measures to protect the frontier, considerable alarm was still felt. In June it was reported that Donald McLeod was organizing an invasion of Canada for July 4. There was a report of similar preparations at Port Huron. Toward the end of the summer there were rumors of a widespread organization of “Hunter’s Lodges” along the border of the United States, the purposes of which were unfriendly to the Canadian Government. The Brady Guards, of Detroit, were kept busy patrolling the Detroit and St. Clair rivers. Mr. Fox notified the State Department on November 3 that he had information of a large secret combination in the United States which was preparing to wage war on the British provinces, and that “no less than nine steam-

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<sup>1</sup> Reports of Committees, No. 1008, 25-2, Vol. 4.

boats that ply on Lake Erie had been engaged to the service of the conspirators.”<sup>1</sup> The Secretary of State saw in these exaggerated reports some room for fear, but he assured Mr. Fox (November 15) that “regular military bands from the American side” would be successfully repressed, and stated that the United States Government would expect British officers to prevent a violation of the territory of the United States.<sup>2</sup> It was a time for discretion and vigilance on both sides. On November 11 the *United States*, commanded by Captain Van Cleve, left Oswego with many filibuster passengers bound for Ogdensburg. She also towed two “Patriot” schooners part of the way. Colonel Worth, United States army, followed in the *Telegraph*, seized all three vessels at Ogdensburg and took them to Sackett’s Harbor.<sup>3</sup> The “deluded youths” who were left in Canada were soon caught by the Canadian authorities.<sup>4</sup>

On November 21 the President, with good effect, issued a proclamation against insurgents from the United States. The Canadians, however, felt the need of more effective steps to protect the long frontier. This, together with the fact that the Secretary of State had called the attention of Mr. Fox to the provisions of the Agreement of 1817, caused that gentleman on November 25 to write the Department of State that it was “found necessary to equip under the British flag a more extensive naval armament” upon the boundary lakes and rivers than was allowed by the stipulations of the convention of 1817.<sup>5</sup> He apprehended no objection by the Government of the United States to this temporary increase of force to guard against the unlawful and piratical acts of hostility which threatened the British colonies. In order that there might be no misapprehension, Mr. Fox thought it expedient to give assurance that the extra armament was

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<sup>1</sup> 19 Notes to State Dept.

<sup>2</sup> 6 Notes from State Dept.

<sup>3</sup> Van Cleve : *Reminiscences of Early Steamboats*, etc., p. 11.

<sup>4</sup> *Upper Canadian Gazette Extra*, Nov. 16, 1838.

<sup>5</sup> 19 Notes to State Dept.

"equipped for the sole purpose . . . of guarding Her Majesty's provinces against a manifest and acknowledged danger," and he stated that it would be discontinued "at the earliest possible period" after the causes which created the danger should cease.<sup>1</sup> The United States Government made no objection to this extra force. It seems to have been satisfied with the explanation made by Mr. Fox at this time. On the opening of navigation the next spring, however, it decided to make provision for a temporary lake fleet in case it was needed. When a bill was proposed giving the President additional power in regard to the augmentation and preparation of the naval forces of the United States, Mr. Fillmore, on March 1, proposed an amendment so that the bill would also include the equipment of vessels on the lakes. Mr. Fillmore was informed at this time that the British had one armed steamer on Lake Ontario, one on Lake Champlain, and three on the upper lakes, and he suggested the advisability of taking some steps in order to be ready to protect the commerce on Lake Erie where the United States Government had not owned a vessel of any kind.<sup>2</sup> An act was passed on March 3, the day after the news that blood had been shed on the Maine frontier, which provided that in event of invasion or imminent danger the President should be authorized to get coast vessels ready for service "and to build, purchase or charter, arm, equip and man such vessels and steamboats on the Northern lakes and rivers whose waters communicate with the United States and Great Britain as he should deem necessary to protect the United States from invasion from that quarter."<sup>3</sup>

It appears that during the winter of 1838-39 all danger from the "Patriots" was gone. The season of 1839 was more

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<sup>1</sup> The last serious raid of the year occurred in the Detroit river. Armed men on the *Champlain*, during the first week in December, crossed from Detroit to Windsor and set fire to the steamer *Thomas*. Several of the raiders were caught by the Canadians. Four were shot and others executed.

<sup>2</sup> Cong. Globe, Mar. 1, 1839, Appendix, p. 282.

<sup>3</sup> 5 U. S. Stats. at Large.



peaceful. General Scott, who had been sent to the disturbed frontier, was of great service in preventing the madness of the few from dragging the peaceful, non-contesting many into an aggressive war, which would involve all in crime, disaster and disgrace. In his addresses to large gatherings of "Patriot" sympathizers he reminded them that if, in the attempt to force on unwilling neighbors independence and free institutions, we had first to spurn and trample under foot treaty obligations and laws made by our own representatives, we should greatly hazard free institutions at home in the confidence and respect of our own people. The trial and conviction of Mackenzie in the United States in June also had a good effect, by preventing him from making agitating speeches.

By the autumn of 1839 the Secretary of State felt that there was no longer any danger of acts of hostility against Canada. The British authorities also felt that all danger was passing away. General Scott did not hear of a single armed British vessel on Lake Erie during the year.<sup>1</sup> As a security against the renewal of the troubles of the preceding year, however, the British authorities owned or hired two steamers, one schooner and several barges, which were employed on Lake Ontario and the St. Lawrence river up to the close of navigation. Mr. Fox thought that in case no new attempts against the peace of Canada should occur during the winter there would be no good reason for keeping a larger force than that prescribed by the Agreement of 1817. The abuses which led to the Canadian rebellion were being corrected, and the sympathizers on both sides the border recognized that it was foolish to try to change the destiny of the Dominion by unlawful movements.

In his annual message to Congress, December, 1839, Mr. Van Buren stated that "there is every reason to believe that disturbances like those which lately agitated the neighboring

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<sup>1</sup> Report of Scott to Secretary Poinsett, Mar. 23, 1840. In Exec. Doc. 163, 26-1.

British provinces will not again prove the sources of border contentions or interpose obstacles to the continuance of that good understanding which it is the mutual interest of Great Britain and the United States to preserve and maintain." He said that "within the province tranquillity is restored, and on our frontiers that misguided sympathy in favor of what was presumed a general effort in behalf of popular rights and which in some instances misled a few of our inexperienced citizens, has subsided into a rational conviction strongly opposed to all intermeddling with the internal affairs of our neighbors."<sup>1</sup> He hoped that future immigrants from Canada would abstain from attempts to endanger the peace of the country which gave them an asylum.

At the opening of the year 1840 social and business intercourse had been resumed along the frontier,<sup>2</sup> but there were other dangerous questions already above the horizon, and the war hawks did not cease shouting for the fray, though they were kept in check by the disapprobation of the majority of the people in the United States and by the wisdom of the higher officials on both sides of the lakes. In the United States it was felt that the British had not yet given satisfactory answer in regard to the invasion of the United States territory by the expedition against the *Caroline*. Mr. Fox had placed it on the same footing as the invasion of Florida by United States troops,<sup>3</sup> which had been justified by President Monroe in his messages of March 25 and November 17, 1818. There were also reports that the British were strengthening their military means upon the Maine boundary. This was not in harmony with the arrangement made between the Governor of Maine and the authorities of New Brunswick through the interposition of General Scott in 1839. It was also believed that the military and naval preparations which had appeared necessary in 1838 were to be continued.

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<sup>1</sup> Journal of Senate, 26-1, 1839-40.

<sup>2</sup> *Toronto Examiner*, Jan. 1, 1840. Also, *Ogdensburg Times*.

<sup>3</sup> 19 Notes to State Dept., Oct. 21, 1839.

The condition of the northern frontier attracted considerable attention in Congress in February, 1840. In March, active measures were taken to ascertain the truth concerning the various rumors of extensive British defenses. On March 9 the following resolution passed the House of Representatives:

"That the President of the United States be requested to communicate to this House, if compatible with the public service, whether the Government of Great Britain has expressed to the Government of the United States a desire to annul the arrangement entered into between the two Governments in the month of April, 1817, respecting the naval force to be maintained upon the American lakes; and that, if said arrangement be not annulled, whether there has been any violation of the same by the authorities of Great Britain."

On March 12 Mr. Norvell offered a resolution, "That the President of the United States be requested to cause to be communicated to the Senate all the information that is possessed by the government, or can be conveniently obtained, of the military and naval preparation of the English Government on the northern frontier of the United States, from Lake Superior to the Atlantic Ocean, distinguishing the permanent from the temporary and field works and particularly noting these which are within the claimed limits of the United States."<sup>1</sup>

In submitting the resolution, he said that it was his firm conviction, and had been for a long time, "that the period had arrived when preparations of a military and naval character on one side of our northern frontier ought to be met by corresponding preparation on the other side." He thought that while the British Government was "amusing us with negotiations as Philip amused the Athenians, it was making quiet and steady progress in preparing for offensive and defensive operations" along our undefended frontier from Maine to Lake Superior.

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<sup>1</sup> Congressional Globe, Vol. 8, 26-1, pp. 262-3.

“Along the whole line of Lake Ontario, it had been stated that new military works were in the progress of construction, and that the old works were in a course of being strengthened. The military posts at Malden had also, as he had learned, been rendered stronger. White Wood Island, which had been many years ago most unfortunately ceded to the British, was, as he had been informed in letters, fortified, or about to be fortified. That island was in the river Detroit, near its mouth; and, with a powerful battery, it would command the passage of both the American and British channels of the river, and lay the whole of the upper lake country, with its important military posts, its flourishing cities and villages, at the mercy of an enemy. Military works were constructed, or constructing, at Sandwich and Windsor, immediately opposite to Detroit. And that prosperous city could, from these works, in one hour, be laid in ashes. And what was the state of defensive military preparation on our side in that quarter? Why, sir, we had not even the benefit of public barracks for the protection and accommodation of the miserable skeletons of companies which were stationed there. The commanding officers were compelled to rent a house at the water’s edge for their accommodation.

“He had been told that the British authorities were building one or two steam frigates on Lake Ontario and Lake Erie. Such a measure was a departure from the spirit of that arrangement by which the American and British navies were respectively reduced to one vessel on Lake Champlain, one on Lake Ontario, and two on Lake Erie and the upper lakes, not exceeding one hundred tons burden each, and each carrying but one gun. Were the steam frigates to be of one hundred tons burden, and to carry but one cannon? Nobody could believe it.”

Mr. Norvell said he was not anxious for war, but he thought that the collection of men, the accumulation of materials, and the preparation of naval vessels along the frontier, together with the fact that the British “were negotiating for the purchase of California,” indicated that a crisis was approaching which demanded vigilant preparation.

It does not seem that there was so much danger as Mr. Norvell had been led to believe. Mr. Calhoun thought that there was no real danger along the inland frontier except in case of an actual collision of the local authorities along the Maine boundary.<sup>1</sup> On April 1, in the Senate, he said that he "regarded the British possessions on the frontier as a pledge of peace, and not a source of danger."

The House was at least determined to get all the necessary information to enable it to decide what was best to be done. On April 6 a resolution was moved by Mr. Fillmore, and adopted by the House, requesting the President to communicate "any information in possession of the executive department showing the military preparation of Great Britain, by introducing troops into Canada or New Brunswick, or erecting or repairing fortifications on our northern and northeastern boundary, or by preparing naval armaments on any of the great northern lakes or the waters connected with them, and what preparations, if any, have been made by this government to put the United States, and especially the northern and northeastern frontiers, in a posture of defense against Great Britain in case of war."

On April 9 the House considered a resolution of Mr. Hand, of New York, requesting that the Secretary of War communicate "what works he considered necessary to be constructed in order to place the northern and northeastern frontiers in a proper and permanent state of defense."<sup>2</sup> This resolution was extended, at the request of Mr. Wise, of Virginia, so as to embrace an "entire system of defense."

In the discussion no one claimed to be seriously alarmed. Mr. Wise, in his principal speech, talked of our defenseless condition in the face of a threatened war; he said we "stood now in the presence of the British lion himself," and with less means of defense than any other power, civilized or barbarous, of one-tenth our physical force; he thought it folly

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<sup>1</sup> Congressional Globe, 26-1, Vol. 8, Appendix, p. 369.

<sup>2</sup> Congressional Globe, 26-1, Vol. 8, pp. 311-313.



to talk of war about a few pine logs when . . . every portion of our frontier was "exposed to British aggression and British bayonets." A few minutes later Mr. Wise added: "I am no alarmist. I have no idea that there is to be a war, but I go for the necessity of fortifications upon the most liberal scale for a peace establishment." Mr. Hand was no alarmist. He had no desire for an exciting and injudicious debate. "All he desired now was that the House might be fully informed."

Mr. John Quincy Adams "thought that there was not the slightest danger at this moment of a war with Great Britain, or for years to come" (and he was sorry that Mr. Rhett, of South Carolina, was not glad to hear it). Mr. Adams founded his opinion upon the character of the President's message, and upon the growing probability that the northeastern boundary question would be settled by arbitration, since Maine was now ready to refer the settlement to the United States Government. Mr. Thompson thought fortifications were not necessary, and desired to await further news from England before arming the country.

From March to July the executive department endeavored to secure all the information possible regarding the subjects mentioned in the various resolutions of inquiry which passed the House.

On March 28 Mr. Van Buren communicated reports from the Secretaries of State and of War,<sup>1</sup> with documents, which gave evidence that the British Government had not shown any desire to annul the Agreement of 1817. Mr. Forsyth enclosed Mr. Fox's note of November 25, 1838, concerning the necessity of a temporary increase of naval force, and said that "prior to the date of that communication the Secretary of State, in an interview invited for that purpose, called Mr. Fox's attention to the disregard by Her Majesty's colonial authorities of the convention arrangement between the two countries as to the extent of naval armaments upon the lakes.

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<sup>1</sup> House Exec. Doc., No. 63, 26-1.

In the autumn of the past year the Secretary of State made known verbally to Mr. Fox that, the causes assigned in his note no longer existing, the President expected that the British armament upon the lakes would be placed upon the footing prescribed by the convention. Mr. Fox engaged to communicate without delay to this government the substance of the conversation between them, and expressed his own conviction that, if the winter then ensuing passed without renewed attempts to disturb the tranquillity of the Canadas, there could be no sufficient motive for either government maintaining a force beyond that authorized by the convention of 1817."

Mr. Poinsett, Secretary of War, enclosed a report of General Scott (dated March 23), who stated that he did not think the British had had an armed vessel above Detroit for many years; that they had hired temporarily one or two armed steamers on Lake Erie in 1838, and that they had employed on the St. Lawrence and the Canadian side of Lake Ontario, up to the close of navigation in 1839, two steamers, one schooner and a number of barges.

On June 29, Mr. Van Buren sent to the House a second communication in answer to the resolution of March 9 concerning the attitude of Great Britain to the Agreement of 1817.<sup>1</sup> It contained a report of Alexander Macomb, the Commanding General, to the Secretary of War (June 26), in which he gave replies of various officers who had been addressed upon the subject.<sup>2</sup>

Colonel Bankhead had no information that the Agreement of 1817 had been violated. He said that a large vessel for a steamer was being constructed in the autumn of 1839 at Ni-

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<sup>1</sup> House Exec. Doc., No. 246, 26-1, Vol. 7.

<sup>2</sup> The President had given the Secretary of War instructions to report "any specific information in possession of the War Department relative to the British naval armaments on the lakes, and the periods when the increase of force, beyond the stipulations of the convention of 1817, were severally made on different points of the lake frontier."

agara for the service of the government, and that the British Government had on Lake Ontario a steamboat commanded by officers of the navy, and probably commissioned as a government vessel. He was also informed that "the authorities in upper Canada had last summer in their service on Lake Erie two steamboats which were at first hired from citizens of Buffalo, but which they subsequently purchased." Colonel Crane, of Buffalo, had no information on the subject. He said that there had "been rumors there of armed steamers being built or building at Chippewa, etc., but on inquiry he could learn of none, except the ordinary steamboats for the navigation of the lakes." He had also heard it stated that a steamer was being built on Lake Ontario by the English, and intended for the revenue service, but he did not know what truth there was in this statement. Colonel Pierce wrote from Plattsburg that he had no knowledge of any naval force on Lake Champlain in violation of the arrangement of 1817. He believed there had been no British naval force maintained on Lake Champlain since that arrangement had been concluded.

These replies, together with the letter of General Scott, which had been sent to Congress on March 28, embraced all the information that the War Department could give upon the subject. The Navy Department had not been asked in regard to the matter, probably because there were no naval officers upon the lakes to assist in getting information. According to the rumors mentioned in these reports, it does not appear that there was any extensive naval preparation by the British authorities upon the lakes. Possibly some of the temporary augmentation during 1838 was made in ignorance of the agreement between the two nations.<sup>1</sup> During

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<sup>1</sup> Colonel Brady, of Detroit, wrote that he did not know whether the arrangement had been violated by the British Government; for he never knew that there was such an understanding between the two governments until the resolution of Congress making the inquiry was sent to him. During the border troubles he frequently had a piece of ordnance on board the steamboat in the employ of the United States; and besides that, had the service demanded it, he should not have hesitated to have increased the number, not being aware of the arrangement referred to.

the long peace, in which there was a total disregard of any force at all, many would not have known that such a treaty existed.

On June 29, President Van Buren, in response to Mr. Fillmore's resolution of inquiry of April 6, sent to the House a communication from the Secretary of War, accompanied by a report from the Commanding General of the Army. This report gave the replies of the officers at the principal points on the frontier, from which it appears that the British had strengthened their works at Malden on the Detroit river, at Fort Mississauga near the mouth of the Niagara, at Kingston on the lower part of Lake Ontario, at Fort Wellington, opposite Ogdensburg, N. Y., and at the Isle aux Noix, in the outlet of Lake Champlain. They had also commenced new barracks at Toronto and St. Johns, and had in the provinces 20,000 regular troops, of which two-thirds had arrived in Canada since the spring of 1838.

These official replies do not intimate that Great Britain had any offensive designs. It was understood that the preparations had been made "to suppress rebellion and insurrection among the Canadian population." General Scott was not alarmed. He believed that there were no important British forts on our borders from Vermont to Maine. The works erected near the borders of Maine, above Frederickton, were of little military value, and he "had heard of no new military preparation by the British authorities on the St. Croix or Passamaquoddy Bay."

After receiving this report, the question of defense upon the northern frontier attracted less attention in Congress. During the first part of July most of its time was occupied with bills for pensions and other private claims. Further alarm might have been avoided, but for the border feeling engendered by a new turn in the *Caroline* affair.

In November, 1840, Alexander McLeod, a deputy sheriff in Upper Canada, came across to New York State and boasted that he was the slayer of Durfee on the Schlosser wharf when the *Caroline* was taken. He was at once ar-

rested and placed in the Lockport jail on the charge of arson and murder. This aroused the indignation of the English, and Mr. Fox asked his release. When Forsyth replied that McLeod was in the hands of New York courts and must wait for deliverance in regular course, Lord Palmerston directed Fox to proceed as though the attack on the *Caroline* was done by authority of the British Government. When the Harrison administration came in, it made an attempt to have the matter tried as a national affair, but New York would not give up the prisoner. Mr. Webster, the new Secretary of State, had to inform Mr. Fox that McLeod was in the custody of law, and could not be given up except by process of law. When the correspondence upon this subject was sent to Congress in June, 1841, it led to vehement debates. The rumor in New York that England's Mediterranean fleet was held in readiness to emphasize the demand for the release of McLeod did not tend to calm public feeling.

Another occasion for further discontent at the policy of the British Government was presented on July 14, 1841, when the President sent to the House a part of the correspondence between the Secretary of State at Washington and the United States minister at London, relating to the "seizure of American vessels by British armed cruisers under the pretence that they were engaged in the slave trade."<sup>1</sup> These new sources of bad feeling had a tendency to revive disorders which had already been pacified by prudence and good fortune.

It does not appear that England had any offensive motive in increasing her force in America at this time. But the condition of relations between the two countries led to a renewal in Congress of discussions concerning lake defenses.<sup>2</sup> In the early part of 1841 there were various reports in favor of recommencing the work upon lake harbors which had been suspended, but in July the talk for defensive measures was upon a higher key than harbor improvements. On July 12

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<sup>1</sup> House Exec. Doc., No. 34, 27-1.

<sup>2</sup> Congressional Globe, 27-1, Vol. 10, p. 273. See Appendix, p. 141.



Mr. Ward, of New York, said he hoped the United States would not go to sleep and dream that we should have no war. He favored an increase of naval force. On July 31 the House considered a resolution in favor of armed steamers between northern and southern ports and upon the principal rivers, bays and lakes. On August 2, Mr. Young, feeling that the West and Northwest were not getting their share in the naval and other appropriations, spoke in favor of defenses at Detroit, and gave military as well as commercial reasons for completing a "safe, convenient, and permanent harbor" at Chicago.<sup>1</sup> Its position with respect to facilities of procuring provisions and for transportation, and its unequalled adaptation for harbors, into which armed steamers and other armed vessels might retire for repairs and supplies, would add peculiar value to this inland sea. And in event of war between the United States and the power in possession of half of all the other lakes, Lake Michigan might become the scene of contention. A loss of its possession would certainly be attended with consequences of serious import to the commerce, agriculture and safety of a large and growing portion of the West. But it was probably not from needs of defense so much as of commerce that Mr. Young was dissatisfied towards his fellow-members in not providing for the Chicago harbor. He said that for want of a harbor many vessels had recently been lost in a gale, and that it was a "pity they were not freighted with members of Congress."

In the fortification bill, the committee had not seen fit to provide for defense along the lake frontier. Mr. Porter, of Michigan, offered an amendment for defensive works at Detroit.<sup>2</sup> Mr. Woodbridge advocated the amendment as necessary to protect the commerce which had to pass through the Detroit river, and, in case of war, to prevent a return of the disastrous results which followed Hull's surrender. He dangled the skeleton of 1812 before his hearers, and asked them to remember the river Raisin.

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<sup>1</sup> Congressional Globe, 27-1, Vol. 10, pp. 278, 281, etc.

<sup>2</sup> Congressional Globe, 27-1, Vol. 10, p. 284.

Mr. Allen, of Ohio, on August 3, moved an amendment to the amendment of Senator Porter "for the construction of armed steamers and other vessels of the government on Lake Erie, \$100,000." He said he did not offer it with a view to benefit any particular portion of the country, but, that "having understood the British had two armed steamers on that lake, he thought armed steamers were necessary to watch armed steamers." He also spoke of the capture of the *Caroline* at Schlosser, and said the "Senate would not do its duty if it did not put its seal of reprobation upon the doctrines of international law, which had been officially promulgated by the Secretary of State."

Some local feeling is shown in these debates. In case there were to be defenses, each section of the country had a claim. Mr. Phelps said that if Lake Erie was to have vessels, Lake Champlain should have her share also. Mr. Evans, of Maine, said that treaty arrangements with Great Britain restricted the construction of armed vessels upon the lakes, but Mr. White "was not to be deterred from standing up for the justice of the West." In case of a war, he said hostilities would be carried on by harassing the northern frontier and destroying the commerce of the Northwest. "As a western man, he was bound to have an eye to the interests of that great section, whose representatives, if they would act together, could soon take care of themselves. Who paid the taxes of this country? Those vast masses which people the fertile valleys of the West—all laboring men, and all gentlemen, who individually consume more dutiable articles than any other portion of the Union."

On August 4 Mr. Allen, of Ohio, renewed his motion for an amendment to appropriate \$100,000 for armed vessels on Lake Erie, for the purpose (as he said) of "making our force equal to that of the British Government whose steamers were cruising about our coast prying into its exposed parts." Mr. Porter, who was ready to vote for the amendment, said that the means of transportation on the lakes were almost exclusively in the hands of the United States. The British Gov-

ernment had only two steamers of one hundred tons each, and the Americans had thirty or forty steamers of from two hundred to eight hundred tons; but he could not say whether the merchant steamers would be able to cope with the two armed steamers of four hundred tons each which, according to the newspapers, the British had recently built.

Mr. Woodbridge said that there were enough vessels, if armed and equipped, to defend the lakes in any case of emergency against any possible force that could be mustered by the British, but he wanted Congress to know that it was Detroit which was in the jaws of the lion and needed an appropriation for defenses. He did not think the British had violated the spirit of the treaty of 1817, and thought that the amendment for placing armed vessels upon the lakes by the United States Government should have a proviso that nothing should be done to violate the provisions of that treaty. Mr. Allen said that the greater number of United States merchant vessels only made it the more necessary to provide armed steamers to defend them and the commerce which they carried. His amendment was adopted, after being modified so as "to appropriate one hundred thousand dollars for the construction and armament of armed steamers or other vessels on the northwestern lakes, as the President may think most proper, and be authorized by the treaty with the British Government."

On August 11 the Senate ordered to be printed a petition of persons along the northwestern frontier ("Rufus L. Reed and others") asking an increase of maritime and military forces on the lakes and frontiers.<sup>1</sup> It spoke of the late increase of the forces of their Canadian neighbors upon these inland seas, which now consisted of "two large war steamers of sufficient capacity to mount 30 guns each and which are now in commission and exploring the different harbors on both sides of the line," while the United States had "no fortification in any kind of repair from Sackett's Harbor to

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<sup>1</sup> Senate Exec. Doc., No. 88, 27-1.

Mackinaw, a distance of 1000 miles . . . and no maritime force except a revenue cutter of sixty tons."

The petitioners were "aware that there is but a mere shadow of a prospect of war at present," but they believed in preparing for war in time of peace, and recommended . . . the establishment of such a maritime force as the wisdom of Congress saw fit "to meet the exigencies of the times."

On August 12 the subject of lake defenses was again discussed in the Senate. Mr. Wright, of New York, traced the boundary from Vermont to Michigan.<sup>1</sup> For Lake Champlain, where McDonough won his "ever memorable victory," for Lake Ontario, where the hand of time had long since annihilated the vast fleets of 1814, and for Lake Erie, which had been consecrated by the "gallant and immortal Perry," he favored measures for "defense and protection." Mr. Woodbridge, fearing that the amendment for armed steamers would endanger the whole bill and prevent Detroit from securing defensive works, made an unsuccessful attempt to have the amendment reconsidered. Mr. Wright thought there could be no objection to the amendment except that it should go further and provide for arming the vessels of all the lakes in case the contingent necessity should arise. Mr. Woodbury said that "a single new war steamer need not be erected on the northern lakes under the appropriation," but that "armament," cannon, etc., could be collected at the principal lake cities, and in case of an expected incursion they could be placed on board the commercial steamers.

There was some further discussion in the Senate on August 28 bearing upon the lake defenses.

On September 9 the fortification bill, with Mr. Allen's amendment regarding lake vessels, became a law.<sup>2</sup>

As the time for McLeod's trial drew near there was much disquietude along the lake border of New York.<sup>3</sup> Especially

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<sup>1</sup> Congressional Globe, 27-1, Vol. 10, p. 327.

<sup>2</sup> U. S. Stat., Vol. 5, p. 460.

<sup>3</sup> Miscellaneous Letters, Sept., 1841.

during the latter half of the month of September the relations with Canada became a subject of intense solicitude, which needed to be managed with the greatest prudence. With the news that Canadians were building strong vessels on the lakes also came reports that a strong secret organization on the American side of the lakes was contemplating to disturb the peace with Great Britain. An attempt was made to blow up one of the locks on the Welland canal. It was also feared that an attempt was being planned upon the person of McLeod in case he was acquitted. Added to these was the rumor that popular discontent in Canada against the existing government was liable to lead to another uprising, in which it would be difficult for the United States to preserve absolute neutrality.

Mr. W. H. Seward was at that time Governor of New York. Under the circumstances which then existed he was inclined to think the government should adopt some precautionary means to prevent trouble. On September 17, in a letter to Mr. Webster, after referring to the stipulations of the Agreement of 1817, he said:

"I transmit for the information of the President a copy of a communication from the Marshal of the United States for the Northern District, from which it appears that Her British Majesty's Government has now at Chippewa, on Lake Erie, one steamship of war of 500 tons burden, named the *Minos*, prepared for eighteen guns and having a pivot carriage on deck ready to mount a 68-pounder, calculated to be manned with 75 men, and already furnished with a full complement of muskets, hatchets, boarding-picks, cutlasses, etc. It appears also by the same communication, that the British Government has another steamship of war named the *Toronto*, lying in the same port, of equal tonnage and capacity for war.

"Under the circumstances of the case, it seems my duty to inquire whether the President has received notice of a desire on the part of the British Government to annul the stipulation to which I have referred. The preparations of that gov-



ernment show very fully that it is not its real purpose to continue the stipulation. While I by no means relinquish the hope that the peace between the two countries may be maintained, I beg leave to suggest most respectfully to the President the inquiry whether an armament of at least corresponding power with that which I have described ought not to be provided for the defense of the northern frontier of the State.

"I am moved to make this communication not only by the conviction that our northern frontier ought not to be exposed, but by an inquietude on the subject which prevails among the people in the towns situated upon the lakes. That inquietude seems neither unnatural nor unreasonable when the present condition and circumstances of our northern frontier are duly considered."

On the same day, Hon. Seth C. Hawley, of Buffalo, and a member of the New York Assembly, who was making efforts to get information concerning Canadian operations, wrote Governor Seward as follows:

"I am advised by a private confidential letter that these steamers sail to-day or to-morrow upon the lake, and it is supposed that they are to take position opposite—say at Fort Erie, by the 27th inst. . . . Growing opinion that we are in danger of a sudden blow from Canada . . . People are becoming alarmed, particularly in regard to these steamboats which now menace us . . . if left to our defenceless condition. Would be well to have ammunition sent us . . . to be deposited for safe keeping."

On September 21 Mr. Seward wrote Mr. Webster that the report of a confidential agent whom he had "appointed to traverse the western country, together with a conversation which he had the day before with General Scott led him to believe that there was along the southern shores of the lakes an organization of secret societies, whose purpose was to aid a revolution in Canada." It appeared that these societies had been collecting powder and small cannon to use in their designs.

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<sup>1</sup> Miscellaneous Letters. (Enclosure in Seward's letter to Webster, on Sept. 24.)

Beneath the large amount of report which Mr. Hawley and others were communicating to him, Mr. Seward saw danger lurking. It seemed to him that we were treading upon half-smothered embers, which were ready to burst forth into a dangerous flame. Hardly had his letter been sent to Mr. Seward on the 21st, when he received information that an attempt had been made to blow up the locks on the Welland canal, at Allanburg, Canada. He had also seen the statement in the Buffalo Commercial Advertiser that the two British steamships, the *Minos* and the *Toronto*, had been fired upon at Navy Island by persons who had taken a field piece from the American side of the river for that purpose. On September 23 Mr. Seward received information from Mr. H. J. Stowe, Recorder of Buffalo, and from Mr. Hawley, which confirmed his belief as to the excited state of the public feeling in certain quarters. He did not doubt that there was still in Canada a strong discontent, which might lead to efforts against the government, and he thought that there were still many along the counties next to the lakes who would favor such a movement. In his letter to Mr. Webster on September 22, after referring again to the substance of his previous letters, Mr. Seward said: "If it be admitted, as I presume to be the case, that the immense military and naval preparations made in Canada, have for their object the suppression of internal commotions and the preservation of tranquillity, it is equally manifest that those preparations carried on in full view of the American shore are regarded by many of our citizens as having for their design some aggression against this country." He stated that under existing laws, neutrality could hardly be maintained in case of a civil war in Canada, and for this reason he thought the United States Government should adopt means of defense without delay. He favored the plans recently laid before the President (so General Scott informed him) which "contemplated the purchase and fitting up of four steamboats on Lake Erie, of two on Lake Champlain, and of the completion as a steamer of the large ship of war now on the stocks at Sackett's Harbor."

Seward's letter induced Mr. Webster to make inquiry of the Secretary of Navy concerning ordnance stores on lakes Erie and Ontario.<sup>1</sup> Mr. Simms replied on September 23 that there was neither cannon nor ordnance of any kind on either of these lakes belonging to the navy, but that cannon and other implements of war could be sent from the navy yard near New York by canal to Buffalo, on Lake Erie, and also to Oswego, on Lake Ontario.

On the same day the news reached Washington of the attempt upon the British steamers by the discharge of artillery from Navy Island.<sup>2</sup> Mr. Webster took immediate steps to prevent any further breach. He told General Scott that such attempts must be suppressed.<sup>3</sup> To Governor Seward he wrote: "If we cannot repress these lawless acts, we shall ere long be engaged in an inglorious border warfare, of incursions and violations, ending in general hostilities." On September 24 he wrote United States District Attorney J. A. Spencer to get the truth, find the authors of the outrages and prosecute. On September 25, in order to lessen the dangers of border collision, President Tyler issued a proclamation in opposition to organizations against Canada.<sup>4</sup>

At this time Mr. Webster wrote to Mr. Fox in regard to the new British vessels in the Niagara river, of which Mr. Seward had furnished him a description, in order that there might be a clear understanding as to the attitude of the British authorities<sup>5</sup> toward the stipulations of the Agreement of 1817. He mentioned the note which Mr. Fox wrote to Mr. Forsyth on November 25, 1838, and said that the government of the United States did "not allow itself to doubt" that the increase in armaments was for purely defensive purposes, to guard against hostilities like those of 1838, but he desired to be assured that "these vessels of war, if, unhappily,

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<sup>1</sup> Miscellaneous Letters.

<sup>2</sup> Buffalo *Commercial Advertiser and Journal*, Sept. 18.

<sup>3</sup> Domestic Letters, Vol. 32.

<sup>4</sup> Buffalo *Commercial Advertiser and Journal*, Sept. 29.

<sup>5</sup> Notes from State Dept., Vol. 6, p. 219.

it shall be found necessary to use them at all, will be confined to the sole and precise purpose of guarding Her Majesty's provinces against hostile attacks."

At this time the President had not directed the construction of steamers for the defense of the lakes as provided by the Act of September 9, though there is little doubt that England and the United States were nearer to a war than they had been for twenty-five years. Disorder had been pacified only by prudent diplomacy and by good fortune.

It was felt that in case McLeod was convicted in the New York courts "it might bring on a catastrophe," while even his acquittal would not remove all "grounds of apprehension and alarm." Luckily, it was clearly shown at the trial that he was a mere braggart, and had not even been present when Durfee was killed. Governor Seward felt relieved when he was released (October 12) and taken to Canada in safety.

His acquittal ended one source of international embarrassment, and smoothed the way for the friendly conferences between Webster and Ashburton, which were opened at Washington a few months later, when the wisdom of diplomacy was successfully exerted to prevent two great nations from breaking the peace of the world. Neither country desired a war for national aggrandizement. What each did want was to be let alone so far as anything savoring of aggressiveness was concerned. There was a war party on both sides of the lakes ready to fan the flame of discord, but the government of each country desired to preserve peace.

October brought a decrease in the temperature of the September fever, and there was a stronger probability that the people along the borders of Maine and New Brunswick would keep their hands off of each other, and also that the invasion of United States territory at Schlosser might be satisfactorily settled.

But the British vessels were still on the lakes, and it was feared that they might prove a source of greater misunderstanding and trouble in the future.<sup>2</sup> In a conversation with

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<sup>1</sup> Miscellaneous Letters. Seward to Webster.

<sup>2</sup> Buffalo *Commercial Advertiser and Journal*, Oct. 1.



Mr. Webster, in the latter part of September, it appears that Mr. Fox explained that his statement of November, 1838, in regard to the necessity of increasing the British force on the lakes, was also applicable to existing circumstances. But he gave no written reply to Mr. Webster's communication of September 25. On November 29, Mr. Webster again called the attention of Mr. Fox to the two steam vessels of war at Chippewa,<sup>1</sup> and said that the purposes of the disarmament of 1817—to prevent the expense of rival fleets, to remove causes of jealousy and apprehension, and to place each party on an equal footing—could not be accomplished except by a "rigid compliance with the terms of the convention by both parties." He said that "the convention interdicted the building, as well as the equipment, of vessels of war, beyond the fixed limit. The United States have not been disposed to make complaint of the temporary deviation from this agreement by the British Government in 1838, under what was supposed to be a case of clear and urgent necessity for present self-defence. But it cannot be expected that either party should acquiesce in the preparation by the other of naval means beyond the limit fixed in the stipulation, and which are of a nature fitting them for offensive as well as defensive use, upon the ground of a vague and indefinite apprehension of future danger." Mr. Webster did not doubt that Mr. Fox would see the importance as well as the delicacy of this subject, and he concluded his note by saying that "the United States cannot consent to any inequality in regard to the strictness with which the convention of 1817 is to be observed by the parties, whether with respect to the amount of naval force, or the time of its preparation or equipment. The reasons for this are obvious and must immediately force themselves upon Mr. Fox's consideration."

Mr. Fox replied promptly (November 30) that it was well known that Canadian provinces were still "threatened with hostile incursion by combinations of armed men, unlawfully

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<sup>1</sup> 6 Notes from State Department.



organized and prepared for war, within the frontier of the United States; and it being found by experience, that the efforts of the United States Government, though directed in good faith to suppress those unlawful combinations, are not attended with the wished-for success," he thought the vessels which were serving upon the lakes were necessary to guard the provinces against hostile attack, and he gave the assurance that this was the only purpose for which they were equipped. Probably in view of the fact that Mr. Webster, in his note of September 25, had remarked that he did not understand Mr. Fox's note of November, 1838, to be a notice of the intention of the British Government "to abandon the arrangement of 1817," Mr. Fox stated that he would show Mr. Webster's communication to the home government "with the view of learning the pleasure of Her Majesty's Government in regard to the continuance or annulment, after due notice, of the Convention of 1817."

The later reduction of the British force on the lakes, after the fear of insecurity along the frontier had ceased, shows that Great Britain desired to continue the agreement; but as late as 1842 the London Government still thought it necessary to retain some force in that quarter. In a dispatch of the Foreign Office to Mr. Fox, dated March 31, 1842, it is stated that "Her Majesty's Government is at all times anxious to fulfill scrupulously" all engagements with the United States, and that nothing but absolute necessity would cause a departure from this principle. The dispatch alluded to the state of affairs which had existed in the vicinity of the lakes—the rebellion in Canada and the active support which had been given by the border population of the United States, "un-awed by the menaces, and unrestrained by the efforts" of the American Government to repress them, and stated that these conditions "obviously justified an exception to the strict execution of the treaty" so far as was necessary for the protection of Canada from the ill-affected population along the

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<sup>1</sup> No. 20 Notes to State Department.

border. The continued inveterate hostility of the "Patriots" to the established order of things in Canada, it was claimed, had not justified an earlier reduction of British armaments on the lakes, and it was confidently expected that the United States Government would not insist on a strict execution of the arrangement of 1817. The dispatch from the Foreign Office gave assurance, however, that the British Government intended faithfully to observe the Agreement of 1817 as soon as it could be done with safety to Canada, and stated that "Her Majesty's Government would have the greatest reluctance to annul that arrangement," which had proven a most valuable security for the preservation of the peace.<sup>1</sup>

By 1843 the British force was probably reduced to the strict limit prescribed by the agreement. In answer to a resolution of the House, April 12, 1842, in relation to public defenses for Lake Ontario, General Scott reported to the Secretary of War, on April 16, that the British had "laid the keel of a war steamer of 900 tons at Kingston last September, and had another on the stocks at the mouth of the Niagara," and that "both must be ready."<sup>2</sup> It is possible, however, that these were never finished as war vessels, but were used for commercial craft.

The feeling that the British were increasing their force on the lakes led to the consideration of the best plans to meet this increase. In the report of the Secretary of War, December 1, 1841, and in various reports to the War Department in April and May of 1842, on November 15, 1841, T. O. Jessup, Quartermaster, in his report to the War Department, recommended measures to begin at once for a "canal around Niagara so vessels of war can pass." There were also various reports concerning the military importance of harbors. Mr. Spencer, the Secretary of War, thought that "naval forces on the lakes afford our chief reliance for defence and offense."

The United States owned a revenue cutter on Lake Erie,

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<sup>1</sup> Foreign Office Correspondence, London.

<sup>2</sup> Exec. Doc. No. 225, 27-2, Vol. 4.

but she owned no vessel on Lake Ontario. During the years 1838, 1839-40 she had paid a large sum for the use of the steamers *Oneida* and *Telegraph* on that lake,<sup>1</sup> and this led Congress in the spring of 1842 to consider the advisability of owning a steamer. The great ship of the line, *New Orleans*, which had been begun in 1814, was still in the ship-house at Sackett's Harbor, and inquiry was made to find whether it would be worth finishing, but part of it was found to be too much affected by the "dry rot."<sup>2</sup> No appropriation was made for a vessel upon Lake Ontario.

It was decided by the President in the autumn of 1841 that one or more steamers should be constructed under the Act of September 9 of that year for the defense of the northwestern lakes. Secretary of the Navy Upshur was given directions to this effect, and he concluded that the appropriations would not be enough for more than one steamer. On November 27 he requested Commander L. Warrington, President of the Navy Board, to "take the necessary measures for the construction of one steamer of defense on Lake Erie."<sup>3</sup> Mr. Warrington did not advertise for bids, but, acting for the Commissioners of the Navy, he began to correspond in order "to get information as to plans, etc." On April 20, in response to a resolution of April 12, Mr. Upshur informed the Speaker of the House that they hoped "to enter contract in a few days for all parts of the iron vessel."<sup>4</sup>

On May 20 the House considered and passed a resolution of Mr. Pendleton, of Ohio, requesting the Secretary of the Navy to furnish correspondence relative to the construction of the lake steamer, and to state whether bids had been invited.<sup>5</sup> Mr. Pendleton had desired to put in proposals for some of his constituents, and was not pleased that contracts had been made without advertisement. On June 3, Mr. Up-

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<sup>1</sup> Exec. Doc. 227, 27-2, May, 1842.

<sup>2</sup> Exec. Doc. 225, 27-2, Vol. 4. Upshur to Spencer.

<sup>3</sup> No. 22 Notes to State Department.

<sup>4</sup> Exec. Doc. 199, 27-2, Vol. 4.

<sup>5</sup> Congressional Globe, 27-2, Vol. 4.

shur, in reply to this resolution, stated that he did not think it necessary to advertise for bids. He went on to say: "Still less was it necessary to advertise for proposals as to the place where the vessel should be built. Discretion of the department should have been left uncontrolled here. In exercise of that discretion it seemed to be that the seaboard was out of the question; and I did not consider it wise in the then condition of our relations with England, to begin such a work on the borders of a lake commanded by her naval power. Choice seemed to me to be between Cincinnati and Pittsburg. The latter seemed to have the best material, equal skill, and indeed its means and facilities were greater than those of any other place, not too remote from Lake Erie, and possessing a communication with it by water; hence Pittsburg was selected. It was supposed to be unnecessary to advertise in newspapers for proposals . . . ."<sup>1</sup>

The war scare appears to have collapsed by the time this war vessel was commenced at Pittsburg. The representatives of the lake region in Congress talked of the needs of inland commerce instead of lake defenses. Mr. Mason, of Ohio, on May 18, 1842, said in the House, while advocating a still greater reduction than had already been made from the estimates of 1841 on the Naval Appropriation bill, that he saw no sign of approaching war, and that improvement on lake harbors for commerce was of greater value than any hot-house creation of a navy. "It was the easiest thing in the world to create a war panic. He had witnessed the rise, progress and termination of so many such panics since he had been a member of that body, that he had ceased to be agitated by the alarm, felt or feigned, on such occasions by others."<sup>2</sup> Mr. Mason said that all points in controversy with foreign governments were in process of amicable adjustment at that time.

The new vessel commenced at Pittsburg in 1842 was a side-wheel iron steamer, and was named the *Michigan*.

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<sup>1</sup> Exec. Doc. 238, 27-2, Vol. 4.

<sup>2</sup> Congressional Globe, 27-2, Appendix.

She was not removed to Erie and placed upon the lake till 1843, when she was taken across the country in sections. From that day to this she has been the only naval vessel owned by the United States upon the lakes. At the time of her completion she was "of 498 tons burden with an armament of 2 eight-inch Paixhan guns, and 4 thirty-two pounder carronades." This was in excess of the stipulations of the Agreement of 1817 both as to tonnage and as to armament, but there is nothing on record to show the United States authorities intended to violate that agreement. There had been great changes since 1817 in the size and character of vessels. Steam had largely taken the place of sail-power, and, as Secretary Mason, of the Navy, said in 1844, "no effective steamer for any purpose" was built of so small size as one hundred tons. In 1841 some of the British naval vessels on the lakes were reported to be over four hundred tons burden.

Not long after the *Michigan* was put together at Erie a report of it reached the British Government.<sup>1</sup> On July 23, 1844, Mr. Pakenham, the British minister at Washington, informed Secretary of State Calhoun as follows:

"It has been represented to Her Majesty's Government that the naval force of the United States on the Lakes Ontario, Erie, and Huron, at this moment considerably exceeds that to which Great Britain and the United States reciprocally restricted themselves by the agreement entered into in April, 1817. It is true that not long ago while Her Majesty's Canadian dominions were threatened with invasion from parties unlawfully organized within United States, Great Britain did maintain, in her own defence, a naval force exceeding the amount stipulated in the agreement, but explanation was given of the necessity of that departure from the existing engagement

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<sup>1</sup> Despatch from Foreign Office to British Legation at Washington, June 3, 1844. Mr. Pakenham, the British Minister, was directed to say that augmentation of forces by the United States was unnecessary, that the British Government proposed to adhere strictly to the Agreement of 1817, and that it must claim the right of equality in the matter.



which appeared to satisfy the government of the United States, and when a change in the attitude and disposition of the people on the frontier was sufficiently evident to enable the British Government to feel security against aggression, the British force was reduced to the limit prescribed by the Agreement of 1817. At the present moment, there are happily no circumstances on either side to justify or require any departure from the strict fulfillment of that agreement, and it therefore becomes by all means desirable that it should be fulfilled to the letter by both the contracting parties.

"In addition . . . I have observed in the newspapers of this country an advertisement stating that proposals would be received at the Bureau of Ordnance for the supply of a quantity of cannon, shot, and shells, for the United States, of which a proportion including a number of 32-pounder chambered guns is to be delivered at certain places on the lakes—whereas by the agreement of 1817 it is provided that the armament to be used on board the vessels of the limited tonnage allowed by the same agreement shall be 18-pound cannon.

"This circumstance, I am sure, will appear to you, sir, still further to justify the desire of Her Majesty's Government to receive satisfactory explanations as to intentions of United States Government with reference to the fulfillment of the Agreement of 1817."

This communication was promptly referred to Secretary J. Y. Mason, of the Navy, who at once took steps to ascertain whether the British Government had any iron steamers upon the lakes. He also ordered the commander of the *Michigan* not to leave the port of Erie on a cruise until he should receive further orders, for while he was "not aware that the United States naval forces on Lakes Ontario and Huron exceeded that of the Agreement of 1817, he knew that under a strict construction of that agreement the *Michigan* at Erie would not be allowed."<sup>2</sup>

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<sup>1</sup> No. 22 Notes to State Department.

<sup>2</sup> Miscellaneous Letters, Sept. 4, 1844.

In August, Secretary Mason, in response to his inquiries, received information which he thought gave him some reasons to believe that the British still had "in commission on the northwestern lakes a larger force, both in number and tonnage, than that authorized by the agreement." On August 17, Passed Midshipman Dillaplain R. Lambert had written him from Rochester, N. Y., as follows: "I went to Kingston (U. C.) as a citizen to learn facts. I find at Kingston they have a steamer *Cherokee* of about 600 tons already launched, machinery on board, and can be fitted for service in about twelve days—and can mount from 16 to 24 guns—built of wood. I learned that they have an iron steamer *Mohawk* at Toronto in commission, and commanded by Commodore Fowell, R. N., and can mount from 4 to 6 guns. They also have a schooner called *Montreal* commanded by St. Tyson, R. N., cruising—all the above on Lake Ontario. On the upper lakes they have two vessels—the *Minos*, an iron steamer, and the schooner *Experiment*, both commanded by officers of the royal navy." On August 25, Lieutenant F. N. Parmelee had written a letter to the President from Lake Huron, in which he said: "I learn that the British Government has a powerful steamer, with her armament taken out at a small naval depot on the northern shore of the lake whither I am now going. The name of the place is Penetauguashia, an Indian name. We have no commerce with the port. There is a fine harbor there—the best, I understand, on all the lakes. It is said there are two steamers there belonging to the government, but one I am certain of. Shall write again when I learn facts. There can be no doubt, I think, that the British Government is perpetually violating the spirit of the Treaty."

Both of these reports appear to be based largely upon rumor. If any complete investigation was made to get more reliable information no report of it is found. On September 4, Mr. Mason enclosed these two reports in his reply to Mr. Calhoun, and stated that the vessels mentioned in Lambert's letter and commanded by officers of the royal navy were

found "on the list of the royal navy, published by authority of the Admiralty, though they appeared by the list to mount only one gun each." If the reports were true, however, there was still a violation of the strict letter of the agreement as to tonnage and number of vessels. Secretary Mason suggested that the changes from sail to steam vessels since 1817 "would justify a revision of the agreement" in regard to the tonnage of vessels, and stated that "if it is considered that the British vessels are not inconsistent with the agreement, by reason of the armament being limited to one gun each, the armament of the steamer *Michigan* can be readily reduced to that number."

In regard to the advertisement which Mr. Pakenham had seen in the newspapers, Secretary Mason may be quoted in full:

"The advertisement . . . has been made by Bureau of Ordnance and Hydrography by my direction, in pursuance of a policy, adopted for many years, and in execution of laws of Congress. That policy has been gradually to collect material, ordnance, and munitions, on our entire seaboard and lake frontier. Contemplated purchases of present year do not exceed proportion to which northern frontier is entitled, in pursuance of system adopted; and the measures taken have had no reference to any anticipated disturbances with Great Britain. How far that government, in its wise forecast, has made similar preparations for circumstances which may render them necessary, I am not advised, and have not enquired, as agreement of 1817 does not impose any restriction on such supplies. I have no reason to believe that the appropriations made by Congress for cannon and munitions were influenced by any considerations which threatened the peace which happily subsists between Great Britain and United States. The advertisement has been made to execute in a regular course these laws of Congress."

On September 5, 1844, Secretary Calhoun transmitted to Mr. Pakenham the letter of Secretary Mason.<sup>1</sup> There is

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<sup>1</sup> No. 7 Notes from State Department, p. 48.

nothing on the records at the State Department to indicate that there was any further consideration of the subject at that time,<sup>1</sup> and the *Michigan* was allowed to cruise upon the upper lakes.

The general temper of the Peel ministry, with Lord Aberdeen at the head of foreign affairs, had been pacific. The northeast boundary question had been settled by friendly interviews between Webster and Ashburton. Various other sources of dispute were amicably arranged. But Oregon became more and more a bone of contention as the Presidential election of 1844 approached. "Fifty-four Forty, or Fight" was the cry of those who were enthusiastic in their ideas of the "manifest destiny" of the United States. Even the schoolboys wrote it on the fences. This bluster over the Oregon question perhaps led to some fear that the lakes might again become a sea of carnage. The Council of Rochester, N. Y., saw the "opposing shore of Lake Ontario bristling with active military preparations."<sup>2</sup> President Polk, in reply to a Senate inquiry, proclaimed to that body on March 4, 1846, that "under this aspect of our relations with Great Britain I can not doubt the propriety of increasing our means of defence both by land and by sea."<sup>3</sup> But all the "stage thunder" died away, the Oregon question was settled without further strained relations, and "manifest destiny" became satisfied with a corner of Mexico. The new tariff bill in the United States also probably had a tendency to secure a friendlier feeling from England.

The feeling along the northern border now became such that rumors of war vessels ceased, and the mirage of danger disappeared.

In a report of the Secretary of the United States Navy, March 2, 1846, it is stated that of five ships of the line which

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<sup>1</sup> The incidental suggestion of Secretary Mason that the Agreement might be revised probably called forth no observation from the British Government. (Note from Foreign Office, April 2, 1897).

<sup>2</sup> Senate Doc. 162, 29-1, March 10, 1846.

<sup>3</sup> Senate Doc. 248, 29-1, Vol. 5.

were at that time building, one was on Lake Ontario, at Sackett's Harbor.<sup>1</sup> This probably refers to the ship *New Orleans*, which had remained unfinished since 1814, for it does not appear that any naval vessel was placed upon Lake Ontario. The *New Orleans* finally ended its long, inactive career by being sold for old timber and kindling wood, though it seems to have been upon the navy list as late as 1862.<sup>2</sup>

On January 27, 1848, Mr. Buchanan, who was then Secretary of State, asked Mr. Crampton to secure permission for the passage from the lakes through the St. Lawrence to the Atlantic ocean of the two iron steamers *Dallas* and *Jefferson*, which had been recently employed in the revenue service on Lake Erie and Lake Ontario, but were no longer needed. Their passage was granted and canal charges were omitted. Two small schooners were taken from the ocean to the lakes the next November to replace the iron steamers which had been removed.<sup>3</sup>

It was not likely that the United States Government would have removed her iron revenue vessels if the British had not shown a disposition at that time to abide by the spirit of the Agreement of 1817. In 1850, when Mr. Cobden was pointing to the Agreement of 1817 as a precedent for a plan by which England and France could reduce their expensive armaments, he stated that there was then only "one crazy English hulk on all the lakes."<sup>4</sup> In July, 1852, Joseph Smith, of the United States Bureau of Yards and Docks, reported to the Secretary of the Navy that the British Government had ordered all its naval vessels, which had formerly been in commission on the lakes, to be dismantled.

In 1845, Commodore Morris and Colonel Totten, by order of the Navy Department, made an examination of the northern frontier. In 1848, Captain Breese did the same. From

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<sup>1</sup> Senate Doc. 187, 29-1.

<sup>2</sup> London *Times*, Jan. 7, 1862.

<sup>3</sup> Notes to State Department, Vol. 25.

<sup>4</sup> Bright and Rogers : Speeches of Cobden.



their reports it appears that no danger was apprehended.<sup>1</sup> It was found "unnecessary and inexpedient even to progress further with the uncompleted works . . . on the shores of the northern lakes." In July, 1851, Lieut. M. F. Maury, of the United States army, said that the friendly feeling in Canada made measures of defense unnecessary. In case it was thought best to provide against the possibility of a naval surprise on the lakes he said: "Engines and armaments might be placed upon lake shores. . . . The frames of a few small men-of-war steamers could be gotten out at the navy yards of Memphis and New York, and on the first appearance of the war cloud could be sent to lakes by the Erie and Michigan canals, put together, and be ready for launching at a moment's warning."<sup>2</sup>

In September, 1851, Commander R. B. Cunningham, of the United States navy, reported that the changes since 1812 would prevent the lakes from ever again becoming an arena of naval combat, and that the United States needed no preparation in that quarter.<sup>3</sup> Captain Morris, of the navy, reported (July, 1851) that no danger from attack was to be apprehended in that quarter, though the advantage of canals would give Great Britain a temporary superiority of force on Lake Ontario in case of war. General Totten thought (November, 1851) the United States would have a great superiority in preparation upon the other lakes. In 1852, when the legislature of Pennsylvania passed resolutions for a navy yard, naval depot and dry dock upon the lake frontier, in order that the United States might show herself in time of peace prepared for war, Secretary Graham, of the Navy, stated to the Naval Committee of the Senate that he thought such a measure unwise and unnecessary.<sup>4</sup> He saw no reasons for preparations for war till there was a chance of war in sight.

There was a general feeling that "warlike preparations on

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<sup>1</sup> Senate Reports 331, 32-1, Vol. 2, Aug. 10, 1852.

<sup>2</sup> Reports Com. 86, 37-2, Vol. 4, pp. 426 and 514.

<sup>3</sup> Reports Com. 86, 37-2, Vol. 4, pp. 422 and 434.

<sup>4</sup> Senate Report 331, 32-1, Vol. 2.

either side of the lake shores in time of peace would be the signal for similar or more extensive preparations on the other." Joseph Smith, of the Bureau of Yards and Docks, said that in case of any future war, the United States, by means of its merchant marine and its railroads, could soon outstrip England in building a lake navy.

The changes in economic conditions had made the lakes the main avenue of transportation for western products, and the minds of the enterprising people of the lake region were interested in commerce rather than war. The importance of the lakes as a highway between East and West was rapidly increasing.<sup>1</sup> In 1854 the United States entered into a reciprocity treaty with England, by which British subjects were given the free navigation of Lake Michigan and free trade in various articles. In return for this, the United States received more extended fishing privileges and "the right to navigate the river St. Lawrence and the canals in Canada used as the means of communication between the great lakes and the Atlantic Ocean with their vessels, boats, and crafts as fully and freely as the subjects of Her Britannic Majesty. . . ." Thus the people on each side of the lakes were attracted more and more to the other, and social and business relations softened the sharpness of border lines.

A further objection to the *Michigan* was made by the British authorities, however, in 1857. A new question in regard to revenue vessels also arose in 1857-58. In 1856 the Secretary of the Treasury was authorized to sell at auction the two revenue vessels, the *Ingham* at Detroit, and the *Harrison* at Oswego, which had been upon the lakes for

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<sup>1</sup> Before 1836, and in fact for ten years later, the Mississippi was the main avenue of trade for the West, but after 1846-7 the lakes became the principal avenue. (Wis. Hist. Coll., Vol. 13, p. 293. 1895).

Other economic changes, as well as new political conditions, led to the projection of a canal through Central America, to shorten the route from the Atlantic to the Pacific. By the Clayton-Bulwer treaty of April 19, 1850, Great Britain and the United States agreed to defend the complete neutrality of such canal. Each party agreed not to acquire or maintain exclusive control over any such canal, and not to acquire any colonies or territories adjacent thereto.

several years, and to have six small 50-ton cutters built for the protection of the revenue of the lakes.<sup>1</sup> While these six cutters were being built, and at a time when it seems that the United States had no cutters upon the lakes, the Governor of Canada reported to the home government that "an American vessel, qualified as a revenue cruiser," of 800 tons burden, and having a 68-pound Paixhan gun, was making frequent excursions on the lakes from its headquarters in the Detroit river. The Earl of Clarendon drew the attention of Mr. Dallas, the American minister at London, to the matter. Mr. Dallas stated that the vessel was probably the *Michigan*, and was armed with only an 18-pound gun. Mr. Dallas also stated that the tonnage of the *Michigan* was in excess of that stipulated by the Agreement of 1817. This led the Earl of Clarendon to direct Lord Napier to bring the subject before Mr. Cass at Washington.<sup>2</sup> This Lord Napier did on April 8, 1857, and suggested the "expediency of further inquiry, in order that measures [might] be taken for the correction of any infringement of the engagements of 1817 which may have occurred." Mr. Cass referred Lord Napier's note to the Navy and Treasury Departments,<sup>3</sup> but if they made a reply to Mr. Cass it was probably only verbal. In the reply of Mr. Cass to Lord Napier the contention seems to have been that the ship in question was not, in fact, a vessel of war.<sup>4</sup>

The intimation in 1857 that revenue vessels were included under the Agreement of 1817 was followed in 1858 by inquiries from the British Government in regard to the "six new armed revenue cutters," which, according to information received from Canada, had been placed upon the lakes, and which it was apprehended might "not square with the mutual obligations of the two countries contained in the treaty of 1817."<sup>5</sup> Lord Napier, on July 2, intending to leave

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<sup>1</sup> Act of Aug. 18, 1856.

<sup>2</sup> Notes from Foreign Office.

<sup>3</sup> Domestic Letters, April 11 and 17.

<sup>4</sup> Correspondence at the Foreign Office.

<sup>5</sup> 37 Notes to State Department, July 2, 1858.

Washington for two weeks, calling both at the State Department and at his home to see Secretary Cass, and failing to find him, wrote him a note, in which he stated that when he next met him it would be his "duty to ask verbally" concerning these cutters, and that Mr. Cass would much oblige him "by inquiring whether the vessels alluded to have been built and whether they are destined for the purpose alleged." Lord Napier had returned by July 17, and soon after, probably July 27, or August 9, he left a memorandum<sup>1</sup> with Mr. Cass in which he asked whether vessels of war or revenue vessels were about to be placed on the lakes; if such vessels were being built, what was their number, tonnage, and armament; and whether they were built by any special appropriation of Congress.<sup>2</sup> It is probable that Mr. Cass answered the questions verbally, since no formal written reply is to be found at the Department of State.<sup>3</sup>

These inquiries in regard to cutters and the renewal of the complaint in regard to the character of the *Michigan* seem to have originated in the disputes of 1856 concerning the Central American canal and the recruiting in the United States of soldiers for the Crimean War. There was excitement when Mr. Crampton, the British minister at Washington, was given his passports, but it soon subsided. The United States Government had been suspicious of the English fleet in the West Indies, but the British Government disavowed any hostile intention. By 1858 there were no serious difficulties to adjust, and relations were the most cordial.<sup>4</sup> The visit of the Prince of Wales to the United States in 1860 indi-

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<sup>1</sup> 37 Notes to State Department.

<sup>2</sup> Six new revenue cutters were placed on the lakes about this time. Five of them were removed to the Atlantic at the opening of the Civil War in 1861.

<sup>3</sup> From the correspondence of the Foreign Office at London it appears that Mr. Cass "argued that the vessels were very small, and mounted no cannon."

<sup>4</sup> In 1858 and 1859 there was some correspondence concerning the violation of British jurisdiction, and the encroachment of American fishermen. (8 Notes from State Department.)

cates the friendly feeling which existed. President Buchanan spoke of the good effects of this visit, in his message to Congress in December of that year. Lord Lyons characterized this message as having the most cordial language of any that had ever appeared.

But at this very moment a storm was upon the horizon—already visible to some—an irrepressible conflict of such proportions that it would involve England and America in serious misunderstandings which it would take years to untangle.



## VI.

### AGITATION OF LAKE DEFENSES DURING THE AMERICAN CIVIL WAR.

#### CONFEDERATE OPERATIONS FROM CANADA.

Events growing out of the Civil War several times caused the relations between England and the United States to be strained almost to the breaking point. In England there was alarm felt at the vast armies and naval armaments, which continued to grow as the war progressed. With the long Canadian frontier unprotected by costly forts and fleets, with a revived feeling that the United States looked forward to a "manifest destiny" of wider territory, and with thousands of Canadians joining the Union army,<sup>1</sup> it was not unnatural that England should have some fear of danger to her American possessions. This feeling was strengthened after the *Trent* affair by the statement in American papers that England would be brought to a reckoning after the close of the war.

On the other hand, there was a general feeling in the United States that the policy of the London Government was greatly influenced by the wide sympathy for the Confederates which existed among the aristocracy and clergy of southern England, who expected to see recorded the death and funeral of another of the world's republics. English statesmen announced that "the United States has ceased to be." They thought that North and South would never again occupy the same bed together. The Queen had early (May 13, 1861)

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<sup>1</sup> Cases in regard to British citizens in the United States army were considered almost every day in the correspondence from the State Department to the British Legation at Washington during part of the year 1863. In May and June, 1864, it was the principal subject of correspondence.

issued a proclamation of neutrality, but the Government of Great Britain, it was said in the United States, was too fast in recognizing the cotton States as belligerents and too slow in preventing the English ports from being made bases for Confederate operations against the United States. The Times and other London papers appeared to be subservient to the Confederate cause, and some people were "persuaded that the Lord Chancellor sits on a cotton bale."

The first note of warning of the fitting out of the Confederate vessels in British territory was given by the Secretary of State, Mr. Seward, in a private interview with Lord Lyons in April, 1861. The United States Government had received information that the iron steamer *Peerless* was in the hands of the enemy on her way out of Lake Ontario, and that she had regular British papers. Lord Lyons did not think the information was definite enough to justify him in having the vessel detained. Mr. Seward said that the United States could not tolerate the fitting out of piratical vessels on the St. Lawrence, and stated that he would direct the *Peerless* to be seized by United States forces if the reports were true, no matter what flag she carried. Lord Lyons protested, but Mr. Seward gave conditional directions to the United States naval officers.<sup>1</sup>

Mr. C. F. Adams, who, during the Civil War, was our prudent and able minister at London, held the pulse of the English people and promptly recorded each variation. He watched the rise and fall of sentiment in favor of the Southern Confederacy, helped to avoid difficulties, and finally by his firmness and moderation secured greater English activity in enforcing neutrality. In June, Mr. Adams wrote Mr. Seward that the British were sending troops to protect Canada from invasion.<sup>2</sup> Lord Russell, who was Secretary of State for Foreign Affairs, explained that they were sent as "a mere precaution against times of trouble." He said the Ameri-

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<sup>1</sup> 8 Notes from the State Department. Seward to Lyons, May 1, 1861.

<sup>2</sup> Despatches, June 14.

cans "might do something" and he thought it was well to be prepared.

By the Agreement of 1817 the naval force of each party upon the lakes had been limited to four vessels, each of one hundred tons burden, and with restricted armament and duties. In 1861 no British naval vessels were upon the lakes, and there had been none for many years. The United States had only one naval vessel, the *Michigan*, which had been cruising upon the lakes since 1844. The British Government had, as we have seen, already complained in regard to the size of the *Michigan*, and the conditions of 1861 led to another complaint. On August 31, Lord Lyons was instructed by the British Government to represent to the United States Government that the tonnage of the United States naval force on the lakes above Niagara Falls, and especially the armament of the steamer *Michigan* seemed to be "in excess of the limit stipulated in the arrangement of 1817."<sup>1</sup> Mr. Seward, in reply, stated that the only naval force of the United States on the upper lakes was the *Michigan*, of fifty-two tons, carrying one gun of eight inches, and used "exclusively for purposes of recruiting the navy, with artillery practice for the newly recruited seamen." Mr. Seward did not consider that the retention of the *Michigan* upon the lakes was any violation of the Agreement of 1817, but expressed his willingness to consider any views which the British Government might have to the contrary.<sup>2</sup> There is no record at the State Department to show that any further objection to the *Michigan* was ever made. The fact that the United States had no other naval vessel on the lakes probably influenced the British Government to allow a loose construction of the Agreement of 1817 in regard to the size of the *Michigan*. The *New Orleans*, of seventy-four guns, which had remained unfinished at Sackett's Harbor since 1814, seems to have been reckoned in the navy list as

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<sup>1</sup> 42 Notes to State Department.

<sup>2</sup> No. 9 Notes from State Department. Also, see Miscellaneous Letters, Sept, 10.

an effective line-of-battle ship, but there was nothing to fear from it.<sup>1</sup> It seems that there was only one revenue cutter, the *Floyd*, upon the lakes at this time. The five others which the United States Government had had there since 1858 were taken to the Atlantic at the outbreak of the war.<sup>2</sup>

It was doubtless the intention of the Canadian authorities to preserve strict neutrality. Canadian sympathy in 1861 was naturally with the United States. In fact, there was for some time before the Civil War a strong feeling for annexation to the prosperous country whose internal improvements and manufacturing towns could be seen from Brock's Monument. But the people of the United States were suspicious when the nation was in peril. Secretary Seward's circular of October 14 to the Northern governors spoke about the need of defenses for the lakes. In reply to this the Canadian papers said that fortifications on the north were a menace to Canada. The English papers doubted whether the convention which made the Great Lakes neutral would justify either England or the United States in erecting fortifications along their shores, and it was stated that such fortresses would only be standing menaces and could not answer the end desired.

On November 8 the *Trent* affair occurred, and was a new cause of alarm in regard to the relations between England and the United States, but it does not appear that the danger from Canada was great enough to require defensive preparations in that quarter. The Detroit Free Press said that there was no danger on the lakes, and that the merchant craft could be used for defense in case of hostilities. The Toronto Globe said that the act of Commodore Wilkes could not cause any apprehension of war between the two countries.<sup>3</sup> Other Canadian papers went so far as to say that the weight of authority might be found to lie upon the side of Wilkes.<sup>4</sup> There was a wide Northern sympathy in Canada at this time. The Detroit Free Press saw no danger upon

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<sup>1</sup> London *Times*, Jan. 7, 1862.

<sup>2</sup> Information at Bureau of Revenue Marine.

<sup>3</sup> *Toronto Globe*, Nov. 22, 1861.

<sup>4</sup> *Montreal Herald and Gazette*, Nov. 20.

the lakes. The comment of the London press and the demand of the British Government in December, however, seemed to forebode war, and each side considered plans for the defense of the lakes. There was an impression in Canada that General Scott returned from France solely to give counsel as to an invasion of that country, and there was a decrease of Canadian sympathy for the Union cause.

In the midst of the general excitement, statesmen were carried away by their feelings; but Lincoln and Seward, uninfluenced by passion and prejudice, surveyed calmly and decided wisely. The past policy of the country was continued and war was averted, but the rankling wound caused by the *Trent* affair was one that could not be healed at once.

England would have had an immediate advantage in case war had broken out. She had dug a canal from the foot of Lake Ontario, on a line parallel to the river, but beyond the reach of American guns from the opposite shore, to a point on the St. Lawrence below, beyond American jurisdiction, thus securing a safe channel to and from the lakes. She also had a canal around the falls of Niagara. Thus she could in a short time convey light-draft gunboats from the ocean to the lakes, and threaten American commerce on the lake cities. The House Military Committee, however, probably exaggerated the danger. Its report stated that the wealthy cities and immense commerce of the United States upon the lakes from Ogdensburg to Chicago was "as open to incursions as was Mexico when invaded by Cortez;" that light-draft gunboats could in one month shell every town, and at one blow "sweep our commerce from that entire chain of waters." It went on to say:

"Occupied by our vast commercial enterprises and by violent party conflicts, our people failed to notice at the time that the safety of our entire northern frontier has been destroyed by the digging of two short canals. Near the head of the St. Lawrence, the British, to complete their supremacy on the lakes, have built a large naval depot for the construction and repair of vessels, and a very strong fort to protect



the depot and the outlets of the lake. . . . The result of all this is that in the absence of ships of war on the lakes, and of means to convey them there from the ocean, the United States, upon the breaking out of the war, would, without navy yards and suitable docks, have to commence the building of a fleet upon Lake Ontario and another upon the upper lakes. At the same time England, possessing a naval depot at the entrance of this system of waters, can forestall us in all our attempts, both offensive and defensive."

But the British probably felt that the ultimate advantage in this quarter would rest with the United States. They did not desire to make the lakes the theatre of any conflict which might arise. Sir Francis Head said: "If Canadian vessels are attacked on fresh waters, let the injury be promptly avenged by the British navy throughout the wide, rude, salt, aqueous surface of the globe." Mr. C. F. Adams thought that it was the discovery of the indefensible condition of Canada which materially contributed to cool the ardor with which the discussion of the *Trent* affair was entered into.<sup>1</sup> Mr. W. H. Russell, an Englishman, who went from the United States to Canada just after the *Trent* affair to study the condition of the Canadian frontier, said that it was assailable at all points. The line of the Welland canal was open and defenseless. Hamilton had no defenses; the defenses of Toronto were ludicrous; the Grand Trunk Railway was close to the shores of Lake Ontario, where communication could be easily cut; Lake Michigan gave the United States the advantage. New York alone was richer than the Canadas; England did not have as many light vessels as the United States, and Canada could not guard herself from invasion by preparing a navy in time of peace.<sup>2</sup>

Nevertheless, the evident immediate advantage which the British had upon the lakes was the source of various discus-

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<sup>1</sup> Despatches, March 24, 1865.

<sup>2</sup> W. H. Russell: *Canada and its Defences, Conditions and Resources.*

sions, resolutions and reports concerning the northern frontier during the year 1862. The Ohio legislature passed resolutions in favor of a naval depot on Lake Erie to protect the country from danger or injury by an "armed enemy."<sup>1</sup> Lieutenant Totten had also recommended such a depot at some point on the western lakes. The House Committee (on Harbor Defenses on Lakes and Rivers) favored lake defenses.<sup>2</sup> The "brilliant naval triumphs" upon the lakes in earlier days were held out to the "brethren of the East" in order to secure their vote for defenses. The House Military Committee reported in favor of a ship canal from the Mississippi river to the lakes, in order to admit gunboats, though they did not think it wise to abrogate the Agreement of 1817 at that time.<sup>3</sup> Reports upon a national armory in the West favored Pittsburg rather than Chicago, on the ground that it was near the lakes, but not upon them.<sup>4</sup> On April 23, Mr. Blair, of the Military Committee, reported in favor of military canals from the Mississippi to the lakes and from the lakes to the Hudson, so that "one fleet would answer for two" in protecting the "exposed" northern frontier.<sup>5</sup> On April 28 there was a report upon the feasibility of enlarging the Illinois and Michigan canal so gunboats could pass to Lake Michigan.<sup>6</sup> It was believed by many that the Agreement of 1817 did not apply to that lake.<sup>7</sup> On June 3, Mr. Blair, of the Military Committee, reported upon the petitions for enlarging the locks of the Erie and Oswego canals so monitors could pass for the defense of the lakes.<sup>8</sup> Partially to overcome the British advantage on the lakes, the New York Senate also proposed to adapt the canals of the State to the defense of the northwestern lakes.<sup>9</sup>

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<sup>1</sup> H. Misc. Doc. 45, 37-2, Feb. 21, 1862.

<sup>2</sup> H. Reports 23, 37-2, Vol. 3, Feb. 12.

<sup>3</sup> H. Reports 37, 37-2, Vol. 3, Feb. 20.

<sup>4</sup> Reports of Com. 43, 37-2, Vol. 3, Feb. 28.

<sup>5</sup> Reports of Com. 86, 37-2, Vol. 4, April 23.

<sup>6</sup> Reports of Com. 96, 37-2, Vol. 4, April 28.

<sup>7</sup> Congressional Record, 38-1, May 25, 1862.

<sup>8</sup> Reports of Com. 114, 37-2, Vol. 4, June 3.

<sup>9</sup> N. Y. Senate Journal, 1862.

Back of all the petitions and reports upon ship canals was something besides the feeling of danger. It was the actual need of western commerce more than any imminent danger from northern attack that developed the plans for connecting the lakes with the Mississippi and the Atlantic by deep waterways. The ghost of British fleets upon the lakes was pushed into prominence in order to get the aid of the government in digging canals. There was doubtless some cause for uneasiness in the rumors which were occasionally afloat,<sup>1</sup> and there was a considerable number of people in both countries who might have rushed into a conflict if they could have had their way; but there appears to have been a general conviction that the countries would reach a mutual understanding.

During the first two years of the Civil War, when the lower Mississippi was held by the Confederates, the western products considerably increased the lake commerce. The Canadian canals, even before, were not of sufficient capacity to satisfy the needs of the American commerce. In addition to this, just after the *Trent* affair there was considerable American sentiment in favor of canals on American soil. A select committee of Congress in March, 1863, thought that our Canadian neighbors had insulted us and that we should not be compelled to use their canals.

In June, 1863, at a Ship Canal Convention in Chicago, five thousand delegates were reported to be present. The Union arms had recently sustained serious defeats, and the Confederates were planning to carry the war north of the Potomac. The fear that this would secure the adherence of England to the Confederate cause was increased. It was thought to be a favorable time to secure the aid of the government in constructing a commercial waterway from the Mississippi to the lakes and from the lakes to the Atlantic. Nearly every speaker at the convention said that the lake commerce was in great danger. Many thought there should be a procession of the Eads ironclads from the Mississippi to Lake Michigan.

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<sup>1</sup> Domestic Letters, Vol. 68, Oct. 8.

Mr. Spalding, of Ohio, favored the Niagara canal also, so that the procession could pass on to Lake Ontario.

It is evident that the danger of war was much exaggerated. Vice-President Hamlin spoke of the military value of the canals, but he mentioned the commercial value also. Mr. Hubbel, of Wisconsin, said the canals were not a military necessity. He said that if England had desired war she would have declared it in 1862 "when the South had us by the throat," and that there was now no danger of war with her "except by our own volition." Mr. D. B. Ruggles, of New York, talked of the "glorious West as a gigantic hog-pen." With the co-operation of the hog and the canals, vast amounts of corn could be taken to the sea. The hog could eat the corn and Europe could eat the hog.

The convention passed resolutions declaring the construction and enlargement of canals between the Mississippi river and the Atlantic, with canals connecting the lakes, as of great military and commercial importance. It was stated that such canals were demanded alike by military prudence, political wisdom and the necessity of commerce; that they would "furnish the cheapest and most expeditious means of protecting the northern frontier," and, at the same time, "promote the rapid development and permanent union of the whole country."<sup>1</sup>

The energy and resources of the country were taxed to the utmost at this time, and these schemes were not adopted by the government, though they were proposed several times in the Thirty-eighth Congress, during the early part of 1864.<sup>2</sup>

By July 4, 1863, the tide of the Civil War had clearly turned in favor of the Union cause. Vicksburg had fallen, and a few days later the Mississippi was entirely wrested from the hands of the Confederates. Gettysburg had also helped to decide the issue of the war. The invasion by the gallant

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<sup>1</sup> Springfield *Daily Illinois State Journal*, June 4, 1863.

<sup>2</sup> Congressional Record, Vol 57.

Lee was repelled. It was considered an auspicious time for the Government of the United States to speak in a more decided tone against the attitude of the British Government toward the Confederates. It apprehended a crisis in case of the probable failure of all the "friendly appeals to Her Majesty's Government against suffering a deeply concerted and rapidly preparing naval war to be waged against the United States from British ports in Europe and America by British subjects in British built and armed vessels."<sup>1</sup> Mr. Seward, on July 11, when he felt the danger of an approaching naval conflict with Great Britain, in his instructions to Mr. Adams used some expressions which were afterwards incorporated into the President's message, and were considered by the British Government to be "disrespectful and menacing." The President, in the following March, allowed any expressions to be withdrawn which Lord Russell should consider exceptional, though it was asserted that their object had been "to remove out of the way a stumbling-block of national offenses," and not to offend or provoke war.

Events which occurred after his letter of July 11, 1863, "such as the invasion of Johnson's Island from Canada . . . and especially the report of Malling, the pretended Secretary of Navy of the insurgents," caused Mr. Seward to feel that the trouble which he apprehended "was not overestimated nor too soon anticipated."

In the early part of November, 1863, the Governor General of Canada notified Lord Lyons at Washington that there was rumor of a plot of the Confederates in Canada to secure steamers on Lake Erie, release the prisoners at Johnson's Island, and then invade the United States by an attack upon Buffalo.<sup>2</sup> Lord Lyons, at a late hour on the night of November 11, promptly notified Mr. Seward so that measures could be taken to watch lake steamers. General Dix was at once sent to the frontier, and Honorable Preston King was sent

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<sup>1</sup> 19 Instructions, p. 214. Seward to Adams, No. 859, March 2, 1864.

<sup>2</sup> Correspondence relating to Fenian Invasion and Rebellion of the Southern States. Published at Ottawa, 1869.



to confer upon the subject with Lord Monck, so that there might be perfect understanding between the authorities of Canada and the United States.<sup>1</sup> The *Michigan* anchored off Johnson's Island to prevent any expedition against that place, but Lord Monck's warning had already prevented the execution of the plot.<sup>2</sup> The United States ceased to make military demonstrations on the Vermont border.<sup>3</sup>

At the beginning of 1864 there was much anxiety concerning the operation of Confederate agents along the northern border of the United States. Suspicious vessels were reported to be in Canadian waters. They were supposed to be there for the purpose of making piratical attacks upon the lake trade of the United States. The *Montreal* was reported to be armed with twenty-four guns, small-arms, cutlasses and boarding-pikes. The *Saratoga* was also reported as a hostile vessel. Lord Lyons notified Lord Monck of the reports concerning the vessels, and he at once took steps to detain them if the report proved to be true. The large number of Confederates in Canada at this time caused Lord Monck to have fears that there would be great danger of having the neutrality of the Canadian territory compromised during the following season, and this consideration caused him to think that there ought to be some British naval force stationed on the lakes to enforce the commercial police. On March 19 he wrote to the Duke of Newcastle that the Agreement of 1817 prohibited the United States from a naval force competent to protect her commerce from piratical attempts at that time,<sup>4</sup> and that Great Britain was "bound to take stringent precautions that her harbors shall not be used for the preparation of expeditions hostile to the trade of the United States against which the stipulations of a treaty prevents that power from making adequate provi-

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<sup>1</sup> Seward to Lyons, Nov. 12.

<sup>2</sup> Adams to Russell, Feb. 22, 1864.

<sup>3</sup> 10 Notes from State Department to British Legation.

<sup>4</sup> Cor. Rel. to Fenian Invasion and Rebellion of Southern States, p. 61.

sion for her defense.”<sup>1</sup> He suggested that five vessels small enough to pass through Canadian canals should be sent out—one for Lake Ontario, and two each for Lakes Erie and Huron.

Lord Monck sent a confidential agent to investigate the various reports concerning Confederate vessels, and he reported to Lord Russell on March 31 that no evidence was found. Neither the *Montreal* nor the *Saratoga* could be discovered.<sup>2</sup> But he was still of the opinion that it would be “most advisable to have some vessels bearing Her Majesty’s flag upon the lakes.”<sup>3</sup> There was no royal navy on the lakes, and he thought this might hold out some inducement to piratical attempts. Rumors, even though they had no foundation, produced a feeling of unrest on the part of those interested in the lake trade of the United States “which might easily be exaggerated into a sentiment of hostility towards the Canadians from whose harbors they imagine an attack on their commerce might issue.” Lord Monck thought the evil effects of rumors could be stopped if it were known that one British vessel was stationed on each of the lakes, Ontario, Erie and Huron. Mr. Cardwell, who soon took the place of the Duke of Newcastle at the Home Office, promised (April 23) to address Lord Monck later concerning the small naval vessels which were to be kept within the limits of the Agreement of 1817, but no vessels were ever sent. It was doubtless considered wise to make no preparations upon the frontier which might be misconstrued as a menace to the United States.<sup>4</sup>

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<sup>1</sup> Lord Monck’s ideas were not clear in regard to the Agreement of 1817. He thought it limited both parties to “one vessel on Lake Ontario and two on each of the other lakes.” He was also under the false impression that the prohibition had been “imposed on the United States” in the interest of Great Britain.

<sup>2</sup> 62 Notes to State Department.

<sup>3</sup> *Cor. Rel. to Fenian Invasion and Rebellion of Southern States*, p. 107. Monck to Newcastle.

<sup>4</sup> *Toronto Weekly Leader*, Dec. 30, 1864.

The reports of Confederate organizations in Canada probably had some influence in causing the United States to begin the building of cutters for the lake revenue service. A side-screw cutter was begun at Lower Black Rock, near Buffalo, in the early part of April, and was expected to be ready in three months.<sup>1</sup> Lord Lyons saw a newspaper statement concerning the new vessel, and asked Mr. Seward whether it would contravene the conditions of 1817.<sup>2</sup> The latter made inquiry of the Secretary of the Treasury, and on May 11 he wrote Lord Lyons that it appeared that the vessel would form "no part of the naval force of the United States," but was intended exclusively for the prevention of smuggling.<sup>3</sup>

But the idea of making these revenue vessels available for defense in case of an emergency was probably considered, though there was no intention of violating the stipulations of 1817. On May 5, Secretary Chase, of the Treasury, wrote Secretary Seward as follows:

"I have the honor to call your attention to the arrangement of April, 1817, between the United States and Great Britain (U. S. Stat. at Large, v. 8, p. 231) relative to the naval force to be maintained upon the American lakes, and to inquire whether the provision of the arrangement which restricts the naval force of the two governments to two vessels on the upper lakes, is construed by the Department of State to embrace Lake Erie as among the lakes referred to; also whether it is within the scope of the arrangement to restrict the tonnage and armament of vessels designed exclusively for the Revenue Service."

On May 7, Mr. Seward replied:

"I have the honor to state that, in my opinion, Lake Erie may be considered as one of the upper lakes referred to in that instrument. I am not, however, prepared to acknowledge that its purpose was to restrict the armament and ton-

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<sup>1</sup> *Buffalo Morning Courier*, April 15, 1864.

<sup>2</sup> 63 Notes to State Department.

<sup>3</sup> 11 Notes from State Department, p. 222.

nage of vessels designed exclusively for the Revenue Service.”<sup>1</sup>

The United States Government desired to live up to the spirit of the Agreement of 1817, although there was a feeling in Congress that it was unequal under the changes which had occurred since its inception. It was believed that England was too passive in her policy concerning the Civil War in the United States, and that she should have followed the advice of those English statesmen who advocated a more liberal policy toward the United States Government.<sup>2</sup> Notwithstanding the avowed intention of the British Government to preserve a strict neutrality, the Confederates managed to get materials of war from English ports. The Union cause doubtless received assistance in the same way, but this did not prevent the widespread belief that the Confederates were receiving assistance that could have been prevented. On April 22, Mr. Seward said: “We must finish the Civil War soon or we shall get in war with England.” Two months later he was convinced that British sympathy was clearly with the South.

The uneasiness regarding the Confederates in Canada continued.<sup>3</sup> Lord Monck was kept busy investigating reports concerning them. He asked the authorities to adopt every precaution to prevent the Confederates from making Canada a base for hostilities against the Northern States. But notwithstanding the diligence of the authorities, it was still possible for the Confederates to find their way into Canada and secretly plot to break the peace between Canada and the United States. Relations with Great Britain were also made more complicated by the Canadian canal policy, which was not considered to be liberal enough to justify the United States in continuing the Reciprocity Treaty.

On May 25, Mr. Spalding, in the House, passed from a discussion of the inequalities of the Reciprocity Treaty to

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<sup>1</sup> Vol. 64, Domestic Letters, p. 228.

<sup>2</sup> 86 Despatches, No. 694, May 19, 1864.

<sup>3</sup> 64 and 65 Notes to State Department.

consider the Agreement of 1817, "whereby," he said, "the northwestern lakes, with a population of ten million people upon their American borders, and upon whose bosom floats one-third part of the whole commercial wealth of our country, were placed at the tender mercies of Great Britain." He complained that the United States Government was afraid it would offend England to place a naval depot or navy yard upon the American coast of one of the lakes, though Great Britain had been allowed quietly to dig canals by which she could pass gunboats from Quebec to Chicago to "devastate our fairest cities and destroy our richest commerce."

Mr. Spalding said that by their canals the British had "defeated the only object that led us into the arrangement." Mr. Washburn thought that if the government would enlarge the Illinois and Michigan canals in his State the United States would also be able to send gunboats into the lakes. Mr. Pruyn, of New York, said the United States could build gunboats on Lake Michigan, but Mr. Spalding informed him that the head of the Navy Department said that this lake also was included under the Agreement of 1817. Mr. Arnold said there were one hundred vessels of war on the Mississippi which could be taken to the lakes, and he favored the canals rather than the abrogation of treaties. Mr. Spalding was tuned up to a higher key. He had a constituent who controlled fourteen steam propellers from Chicago to Ogdensburg, all of which could within a week have been made into gunboats if there only had been a navy yard on the lakes. Mr. Spalding was not satisfied with the decision of the Navy Department, and he was at that time in favor of making a clean sweep of treaties. "I hope," he said, "when we get our hands once in we will make clean work."

On account of the objections which had been made to establishing a naval depot upon the lakes, Mr. Spalding, on June 13, introduced a joint resolution for the termination of the Agreement of 1817. On June 18 it passed the House in the following form:

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<sup>1</sup> Congressional Globe, Vol. 58, 38-1, p. 2481.



*"Whereas* the treaty of eighteen hundred and seventeen, as to the naval force upon the lakes, was designed as a temporary arrangement only, and although equal and just at the time it was made, has become greatly unequal through the construction by Great Britain of sundry ship canals; and whereas the vast interests of commerce upon the northwestern lakes, and the security of cities and towns situated on their American borders, manifestly require the establishment of one or more navy yards wherein ships may be fitted and prepared for naval warfare; and *whereas* the United States Government, unlike that of Great Britain, is destitute of ship canals for the transmission of gunboats from the Atlantic Ocean to the western lakes:

*"Be it resolved* by the Senate and House of Representatives of the United States of America in Congress assembled, that the President of the United States be, and is hereby, authorized and directed to give notice to the Government of Great Britain that it is the wish and intention of the United States to terminate said arrangement of eighteen hundred and seventeen, in respect to the naval force upon the lakes, at the end of six months from and after the giving of said notice."

This resolution was not considered in the Senate, but on August 4 Lord Lyons wrote Mr. Seward that the attention of his government had been drawn to the resolution, and would view with regret and alarm the abrogation of an arrangement which had for fifty years prevented occasions of disagreement, as well as needless expense and inconvenience.<sup>1</sup> Mr. Seward replied that there was "at present no intention to abrogate the arrangement," and that timely notice would be given in case the government should favor its abrogation.<sup>2</sup>

But letters and telegrams continued to announce that the Confederates were negotiating for the purchase of boats on

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<sup>1</sup> 67 Notes to State Department.

<sup>2</sup> 11 Notes from State Department, p. 558.

the lakes. In July there were rumors that they had machines which were to be mounted on vessels,<sup>1</sup> and that they intended to destroy the cities on the lakes. Such reports induced the United States Government to place a restriction upon the export of materials of war from New York to the British colonies.<sup>2</sup>

An affair on Lake Erie on September 19 brought matters to a crisis. The steamboat *Philo Parsons* left Detroit for Sandusky, taking passengers with supposed baggage at Sandwich and Amherstburg. They proved to be Confederates, and after leaving Kelly's Island they took charge of the vessel. They intended to co-operate with another force designed to capture the armed steamer *Michigan* at Sandusky, to release rebel prisoners at Camp Johnson, near Sandusky, and then to commit depredations on the lake cities.<sup>3</sup> The design on the *Michigan* having failed, the *Parsons* was brought back to the Detroit river, and left at Sandwich in a sinking condition. During the raid the steamer *Island Queen* and some United States soldiers were also captured.

The news that the Confederate flag had been unfurled upon the lakes created much excitement along the frontier. Major-General Hitchcock, of Sandusky, advised "that no time be lost in putting afloat armed vessels upon Lake Ontario and speedily upon the other lakes also." On September 26, Mr. F. W. Seward notified Mr. Burnley, of the British legation at Washington, that owing to the recent proceedings on the lakes it was found necessary to increase the "observing force" temporarily in that quarter.<sup>4</sup> The steam propeller *Hector* was chartered at Oswego, N. Y., for revenue-cutter service. The *Winslow* had been chartered at Buffalo a few days before.<sup>5</sup>

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<sup>1</sup> Lieut. Col. R. H. Hill to Capt. C. H. Potter, July 30, 1864. See Cor. Rel. to Fenians and Rebellion of Southern States.

<sup>2</sup> 11 Notes from State Department, p. 573.

<sup>3</sup> *Detroit Free Press*, Sept. 21, 1864.

<sup>4</sup> 12 Notes from State Department, p. 185.

<sup>5</sup> 12 Notes from State Department, p. 203, Oct. 1.

The United States Government felt that it was only acting in self-defense in meeting conditions which "could scarcely have been anticipated" in 1817.<sup>1</sup> In the Agreement of 1817 neither party had expected to relinquish its right of self-defense in the event of a civil war in its territories. Mr. Adams, in his letter to Lord Russell, said of the agreement:

"It certainly did not contemplate the possible intervention of a third party, ill-disposed to both, which should malignantly avail itself of the known provisions of the compact for the purpose of working certain mischief to that which it hated the most and possibly injuring even the other, by provoking strife between the two. Neither could it have foreseen the precise position in which Her Majesty's Government has been placed by recognizing as belligerents persons capable of abusing the privilege conceded by that measure to the most malicious purpose."<sup>2</sup>

Mr. Seward had just prepared a statement of the outrage upon Lake Erie, when the news arrived that a band of twenty-five desperate men had attacked St. Albans, Vt., robbed its banks and boarding-houses and escaped upon stolen horses to Canada, where they were arrested by the municipal authorities.

Mr. Seward discussed these matters in a friendly spirit with Mr. Burnley, but he wrote Mr. Adams in London to give Lord Russell notice that after six months the United States would deem themselves at liberty to increase the naval armament upon the lakes, if, in their judgment, the condition of affairs should require it. He said that such events required prompt and decisive proceedings on the part of the British Government "in order to prevent the danger of ultimate conflict upon the Canadian borders."<sup>3</sup>

The excitement produced by the St. Albans affair was fed both by the natural course of events and by artificial means. It was felt that Canada was responsible for the conduct of

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<sup>1</sup> 19 Instructions, No. 1136, Oct. 24, 1864.

<sup>2</sup> Nov. 23, 1864.

<sup>3</sup> 19 Instructions, No. 1136, Oct. 24, 1864.

her Confederate guests, and that their bad conduct might endanger the peace with Canada.<sup>1</sup> It produced no better feeling in the United States when Lieutenant Bennett H. Young, commander of the St. Albans raiders, declared that he went to Vermont as a commissioned officer in the provisional army of the Confederate States, and that he had violated no law of Canada.<sup>2</sup> False reports continued to alarm the people and to add to the excitement which naturally existed upon the eve of a great Presidential election. On October 30, the American consul at Toronto telegraphed the Mayor of Detroit that one hundred men, armed to the teeth and loaded with combustibles, had left Toronto to raid Detroit.<sup>3</sup> The congregations at Detroit were dismissed. Bells rang. Rumors spread. Crowds met and had to be dispersed by the Mayor. The hundred men never arrived, but on November 2 a telegram from Washington announced that the State Department had information that there was a conspiracy to fire all the principal cities in the North on election day. The Free Press had ceased to place much reliance in such reports,<sup>4</sup> but they had a tendency to keep up an unhealthy excitement along the border. Some, guided entirely by emotion and passion, would have been glad if a disruption of peaceful relations between the United States and Canada could have been brought about. The war had given a great impetus to the Fenian organization, and there were many Fenians in the Federal army who would have welcomed an opportunity to invade Canada.<sup>5</sup> Then there were others, who, speaking for political effect or personal influence, favored "the next war." A colonel at St. Louis said that "God Almighty had established boundaries for the great Republic

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<sup>1</sup> *Detroit Free Press*, Oct. 27, 1864.

<sup>2</sup> *Toronto Weekly Leader*, Oct. 28, 1864.

<sup>3</sup> *Toronto Weekly Leader*, Nov. 4, 1864. *Detroit Free Press*, Oct. 31.

<sup>4</sup> *Detroit Free Press*, Nov. 4, 1864.

<sup>5</sup> Dix to Stanton, Nov. 22, 1864. See Correspondence Relating to Fenians and Southern States.

bounded on all sides by oceans and peninsulas," and that Canada would become a part of it.<sup>1</sup>

Canadian authorities seem to have done all they could to preserve neutrality, but the tone of some American newspapers gave them offense. Governor Monck took offense at the Dix order to an officer at Burlington after the St. Albans affair, which spoke of pursuing the offenders across the boundary.<sup>2</sup> Seward wrote Lord Lyons on November 3 that "indignant complaints by newspapers . . . as well as hasty popular proceedings for self defense and retaliation are among the consequences which must be expected to occur when unprovoked aggressions from Canada no longer allow her citizens to navigate the intervening waters with safety, or rest at home with confidence of security."<sup>3</sup>

Mr. Seward found no fault with the authorities in Canada, but he felt that the two governments should agree upon some more effective measures to preserve the peace. He saw that the provocations against the people along the line of the border might lead to intrusions from the American side of the lakes. He remembered the border troubles of 1838 and the excitement at the time of the McLeod trial in 1841. Political agitations had existed in Canada as well as in the United States, and in order to prevent future civil strifes he was inclined to think that it would be "wise to establish a proper system of repression now which would prove a rock of safety for both countries hereafter." Mr. Adams, in bringing the matter to the attention of Lord Russell, used the following language:<sup>4</sup>

"Political agitation terminating at times in civil strife is shown by experience to be incident to the lot of mankind however combined in society. Neither is it an evil confined to any particular region or race. It has happened heretofore

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<sup>1</sup> *Toronto Weekly Leader*, Oct. 21, 1864.

<sup>2</sup> 72 Notes to State Department, Lyons to Seward, Oct. 29, 1864. (Monck to Lyons, Oct. 26).

<sup>3</sup> 12 Notes from State Department, p. 346.

<sup>4</sup> 88 Despatches, Nov. 23, 1864.



in Canada, and what is now a scourge afflicting the United States may be likely at some time or other to revisit her. In view of these very obvious possibilities, I am instructed respectfully to submit to Her Majesty's Government the question whether it would not be the part of wisdom to establish such a system of repression now as might prove a rock of safety for the rapidly multiplying population of both countries for all future time."

Whatever this plan of repression was, it would probably have increased the naval force of each party upon the lakes. In December an editorial in the London Times stated that the British authorities should assist Mr. Lincoln if gunboats on Lake Ontario and Lake Erie would impede the enterprises of the Confederates, but that such increased force should not be permanent.<sup>1</sup>

On the day of the November election General Butler and General J. R. Hawley, with seven thousand men as a precautionary measure, were placed upon lake steamers ready for service at any point in case Confederates or Confederate sympathizers should attempt to execute any of the reported plots. Nothing occurred to make their service necessary.

Reports of plots continued, though it was evident that they had decreased in importance.<sup>2</sup> Reported Confederate vessels were searched for, but could not be found. Commander Carter, of the *Michigan*, thought that rumors were issued merely to scare the people.<sup>3</sup> Major-General Hooker, in a telegram to Mayor Fargo, of Buffalo, complained of receiving so little that was reliable, and became sceptical as to the accuracy of the information.<sup>4</sup>

Still, there was reason for vigilance, for since the people had so strongly supported the Lincoln administration at the polls the Confederates saw the approaching doom of their cause, and in order to give themselves a chance to get new

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<sup>1</sup> London Times, Dec. 19, 1864.

<sup>2</sup> 67 Domestic Letters, Nov. 11.

<sup>3</sup> Miscellaneous Letters, Nov. 16.

<sup>4</sup> Buffalo Courier, Nov. 16.

breath they were untiring in their efforts to involve the United States in foreign difficulties. Major-General Dix heard of "rebels drilling north of Lake Ontario," and also saw "indications of retaliation" on the part of American citizens.<sup>1</sup> Thoughts of war with England had become familiar. People complained that the privateers which swept the American commerce from the seas were English-built and English-manned.<sup>2</sup> Detroit believed that further raids were being planned in Canada, and petitioned Congress for "staunch and strong vessels" to protect the cities and shipping of the lakes.<sup>3</sup>

There was intense feeling south of the lakes, both natural and artificial, when Congress met in December. Action at Washington was prompt and energetic. Mr. Seward asked the Secretary of the Navy and the Secretary of the Treasury if they desired legislation for additional naval armament upon the lakes.<sup>4</sup> The Secretary of the Navy thought that since the notice had been given to terminate the Agreement of 1817 it would be well to have two or three additional vessels upon the lakes, though he had not yet submitted estimates for extra expenditures in that quarter.<sup>5</sup> Senator Sherman introduced a bill for six new revenue cutters. He had been out in Ohio when the *Philo Parsons* was captured, and he decided to prevent such another "close shave" for the lake traffic. The two steamers which had been chartered in September "to prevent smuggling" were no longer in the government service.<sup>6</sup> It was felt that in order to guard the long lake coast, vigilance was required. It was understood that the cutters were to be armed with a small pivot gun. This was not supposed to be in violation of existing treaties.<sup>7</sup>

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<sup>1</sup> Dix to Stanton, Nov. 22.

<sup>2</sup> Goldwin Smith's Lecture at Boston, Dec., 1864.

<sup>3</sup> Senate Doc. 2, 38-2, Vol. 1, Dec. 8.

<sup>4</sup> Domestic Letters, Vol. 67, Dec. 9.

<sup>5</sup> Miscellaneous Letters, Dec. 14.

<sup>6</sup> Report on Senate Bill 350.

<sup>7</sup> Congressional Globe, 38-2, Part 1, p. 57.

Passion was aroused on December 14 by the news that the Canada courts had released the St. Albans raiders. Senator Chandler, of Michigan, proposed in Congress that troops be sent to defend the northern frontier from raids from Canada.<sup>1</sup> On December 15 the House passed a bill to terminate the Reciprocity Treaty. Senator Sumner also called for information concerning the Agreement of 1817, with a view of terminating it by proper legislation. The State Department issued an order requiring that all travelers from Canada to the United States, except immigrants, should obtain passports from the United States consuls.<sup>2</sup> On December 19, in discussing a bill for the defense of the northern frontier, Senator Howard, of Michigan, said that the "lion must show his teeth on this side of the border in order to preserve the peace" and to prevent Canada from being a place of refuge for the Confederates. Senator Sherman referred to the inequalities of the Agreement of 1817, and said that Congress should give the President power to place a necessary force upon the lakes. Senator Sumner spoke of the Agreement of 1817 as an "anomalous, abnormal, . . . small type arrangement," whose origin and history and character were still subjects of doubt, and he thought the Senate could easily abrogate it if necessary. Mr. Farwell said there was no need for alarm; that the United States in case of war could easily get entire control of the lakes at any time by converting steamers into war vessels. Mr. Grimes said Great Britain had no vessels which could pass to the lakes.

There was anxiety all along the border. Conservative newspapers admitted that there was danger of a crisis. The Detroit Free Press said: "We are drifting into a war with England," and favored non-intercourse with Canada until Canada could enact proper neutrality laws. Detroit and other cities began to urge the advantage of their location as

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<sup>1</sup> Senate Misc. Doc. 5, 38-2, Vol. 8.

<sup>2</sup> 19 Instructions, pp. 549-551, Dec. 19, No. 1194.

a site for a naval depot.<sup>1</sup> The *Toronto Leader* began to philosophize upon how much of the savage still remained in man to prevent mutual disarmament from leading to lasting results.<sup>2</sup> The attitude of the American Government seemed to indicate that the United States would have a lake fleet by April, and the *Leader* began to advocate the enlargement of the Canadian canals so British vessels could be taken into the lakes. It was stated that the Americans had not observed the spirit of the Agreement of 1817 for three years. As the year closed it was reported at Toronto that fifty thousand Fenians were ready to march upon Canada at a day's notice.<sup>3</sup>

February 9, while Congress had been "showing its teeth" by energetic action, the news of preparations for incursions of Confederates from Canada had not ceased, but the border feeling was gradually becoming less aggressive. After the Dix order was revoked, Mr. Burnley thought all would get along smoothly if the public could be kept from getting too "rampagious."<sup>4</sup> It soon became evident that the naval depot which Wisconsin wanted at Milwaukee would not be needed.<sup>5</sup> The Agreement of 1817 was finally abrogated by Congress in February, but the scare upon the lakes was already over, and it does not appear that there was any intention of placing a naval establishment there. The action of Congress seems to have originated in the idea that legislative sanction was necessary to make executive acts legal. When the subject was under discussion in the House on January 18, Mr. Farwell and others thought that useless vessels upon the lakes were "more likely to involve us in trouble with Great Britain than to do us any good," and though they voted to ratify the notice previously given by the State Department for abrogation of the Agreement of 1817, they hoped that the President would at an early date "institute proceedings or a commission with Great Britain to renew the arrangement."

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<sup>1</sup> *Detroit Free Press*, Dec. 16.

<sup>2</sup> *Toronto Leader*, Dec. 16.

<sup>3</sup> *Toronto Leader*, December 30.

<sup>4</sup> 74 Notes to State Department, Dec. 20.

<sup>5</sup> Senate Misc. Doc. 41, 38-2, Vol. 1, Feb. 20.

The need of war vessels on the lakes was still urged by some, especially by those who hoped to induce the United States Government to engage in building ship canals to join the lakes with the Mississippi. One member said in Congress (February 1) that the United States had fifty million dollars invested in war steamers on the Mississippi, and that for one-tenth that amount a canal could be dug so that they might be taken to the lakes for preservation in fresh water. There were still others who said that "the two thousand ships bearing the teeming productions of the west upon the bosom of the lakes" required more than one war ship for their protection. There was probably some reason for this statement just at this time, for it appears that Great Britain, alarmed by the proceedings in Congress, was preparing to send guns "to arm new naval forces on the lakes."

The policy of the British Parliament was as yet uncertain. Its members were not yet assured that the United States did not desire total abrogation of the Agreement of 1817.<sup>1</sup> Lord Palmerston announced to the House of Commons, however, on February 11, that "the abrogation of that arrangement was not to be considered a final decision but as open to renewal," and that the House was not justified in looking upon the matter as an indication of intended hostilities on the part of the United States. He added: "We cannot deny that things did take place of which the United States were justly entitled to complain, and if the measures which they have recourse to are simply calculated, as they say, for the protection of their commerce and their citizens, I think they are perfectly justified in having recourse to them."

Public sentiment for the Confederates began to decrease after the news of the storming of Fort Fisher and the closing of navigation to Wilmington; the friends of the United States Government gained at London.<sup>2</sup> The aspect in Canada had become peaceful.<sup>3</sup> At the recommendation of the

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<sup>1</sup> Parliamentary Debates, Vol. 177, p. 142. London *Times*, Feb. 11, 1865.

<sup>2</sup> 88 Despatches, No. 868, Feb. 2, 1865.

<sup>3</sup> Detroit *Advertiser and Tribune*, Jan. 27, 1865.



Government of Great Britain, Canada passed an act on February 6 to repress outrages in violation of the peace on the frontier.<sup>1</sup> The London Times began to alter its tone. Lord Russell spoke in a better spirit. Conferences with Mr. Adams were more friendly. Mason, Slidell and Mann, the Confederate agents in Europe, were notified that such practice as had been going on from Canada and acknowledged by President Davis as belligerent operations must cease.<sup>2</sup> Canadian papers stated that measures would be taken to prevent the danger of a war in which the Confederates were trying to involve us.

Still, there was at this time an undercurrent of much restlessness and distrust in England on account of the fear of large impending claims, and of an American war for the conquest of Canada after domestic reconciliation had been secured.<sup>3</sup> This fear was fanned by Confederate emissaries, who said that if forced into the Union they would favor war with England. The disposition of Congress to terminate treaties also nourished a feeling that the United States was unfriendly to England. On February 20, when the defenses of Canada were being considered in the House of Lords, there was much talk of the contest of the North for empire and the need of counter-preparations on the lakes to offset those made by the United States, which they said were in violation of treaty stipulations.

The debates in the Canadian Provincial Parliament at this time indicate that there was a feeling of danger from the United States, and an expectation that fleets would again traverse the lakes. On March 2, Mr. Haultain said:

"I am glad to see that the American Government have given notice of their intention to terminate the convention for not keeping armed vessels on the lakes. I am glad to see that this is to be put an end to, for it was decidedly prejudicial to our interests, and I have no doubt we shall have gunboats

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<sup>1</sup> *Canada Gazette*, Feb. 6. Also, 75 Notes to State Department.

<sup>2</sup> 88 Despatches, Nos. 874 and 879, Feb. 10 and Feb. 16.

<sup>3</sup> 88 Despatches, No. 870, Feb. 9.

on our lakes before the end of the present year. . . . There is no question that should they determine upon going to war with us before the opening of navigation, we might not be able to get a British gunboat on our waters by the St. Lawrence canals, as they are so easily accessible to our opponents, and, without much difficulty could be rendered useless for navigation.”<sup>1</sup>

The Montreal Gazette urged the necessity of a connection between Montreal and Lake Huron by the Ottawa and French rivers and Lake Nipissing, so that the British navy could pass to the lakes with safety and prevent Canada from being “exposed to an irruption of Americans only surpassed by that of the Huns and Goths.”<sup>2</sup> “Were this canal in existence,” it is stated, “gun-vessels could sail from England direct into Lake Huron, and thence they might operate on Lake Michigan, gaining access through the straits of Mackinaw. Small ironclads could run the gauntlet down the St. Clair and Detroit rivers into Lake Erie at Kingston and the Rideau canal. Mackinaw would thus become comparatively useless to the Americans, and Lake Michigan would be sealed by a British blockading squadron.” Mr. Kingston, in his “Canadian Canals,” says that this canal was not urged for mere defensive purposes, but that the motive was to obtain a commercial canal at the expense of the government by revivifying national prejudices.

It was evident that something should be done to combat the feeling that the United States had hostile designs against Canada. Lord Russell suggested that it was time to think of something to take the place of the Agreement of 1817 before it should be terminated by the notice already given.<sup>3</sup> Mr. Adams agreed that armaments were expensive, useless and breeders of suspicion, and he saw no reason for not continuing the treaties since the active efforts of the Canadian authorities.

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<sup>1</sup> Canadian Provincial Parlia. Debates (on confederation) p. 639, March 2, 1865.

<sup>2</sup> *Montreal Gazette*, March 14, 1865.

<sup>3</sup> 88 Despatches, No. 884, Feb. 23, 1865.

On March 8, Mr. Seward announced that the United States had decided to abide by the Agreement of 1817. The passport system was also to cease at once.<sup>1</sup> In accepting the farewell of Lord Lyons on March 20, Mr. Seward said: "I have no doubt that when this dreadful war is ended the United States and Great Britain will be reconciled and become better friends than ever."<sup>2</sup>

Before the news that the United States Government desired to continue the Agreement of 1817 had officially reached London there had been two debates in the House of Commons in regard to relations with the United States and vessels for the lakes. During the first debate<sup>3</sup> on March 13 a letter from New York was cited as evidence that the United States was having constructed in London "a fleet of gunboats for the Canadian lakes." Some favored counter-preparations, and said it was no menace "for a peaceful citizen to put up his shutters in a tumult." Others thought it foolish to vie with America on her own ground, and that it might be best to defend Canada by abandoning her. America could now carry gunboats to the lakes by rail, and if Canada could not be defended in time of war it was a bad policy to keep a force there in time of peace. There were various opinions in regard to the intentions of the United States. Mr. Cardwell, the Colonial Secretary, saw "no evidence of hostility." Lord Palmerston thought that the tone of moderation which was shown in the debate would be useful in both Canada and the United States.

During this debate Watkins advocated that the British Government should express a desire for peace and fraternity with the United States, and should seek to secure, in the interests of peace and civilization, and "as a bright example to surrounding nations:"

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<sup>1</sup> 20 Instructions, p. 89, March 8, 1865, No. 1289. *National Intelligencer*, March 9.

<sup>2</sup> 13 Notes from State Department, p. 189.

<sup>3</sup> Parlia. Debates, Vol. 177.

1. A neutralization of the three thousand miles of frontier, rendering fortifications needless.
2. A continuance of the neutrality of the lakes and rivers bordering upon the two territories.
3. Common navigation of the lakes and outlets of the sea.
4. Enlargement of canals for commerce.
5. Neutrality of telegraphs and post routes between the Atlantic and Pacific.

Mr. Watkins said: "Let the British Government be firm in considering Canada a part of the British Empire, to be defended at all cost, or let them endeavor to induce the government at Washington to distinguish itself forever by adopting the alternative—the neutralization of the lakes and the avoidance of hostile fortifications on both sides of the frontier."

The results of rash speeches in the House of Lords were being neutralized by the wisdom of such men as Fitzgerald and Disraeli in the Commons. Lord Russell was also using his influence to create a better feeling. On March 23, when he laid before the Lords the notice for the termination of the Reciprocity Treaty, he encouraged moderation by stating there was hope of new treaties during the year. In regard to the Agreement of 1817, he said that the recent occurrences on the lakes justified the United States in availing themselves of all the means of repression within their power. Mr. Adams' language had led him to feel assured that Congress would be ready to consider a proposition by which a "small and limited armament might be kept up on the lakes for purposes of police on both sides."

On March 23 the whole question of American relations and Canadian defenses was again debated in the Commons.<sup>1</sup> During the debates, Mr. Cardwell received a dispatch from Canada stating that the United States intended to withdraw the notice for the abrogation of the Agreement of 1817. The news that the United States would abide by the agreement,

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<sup>1</sup> Parliamentary Debates, Vol. 178.

and that the passport system on the Canadian border had been abandoned, created a good effect both in England and in Canada. There was even well-grounded hope for a new reciprocity treaty. Mr. Cardwell, the Colonial Secretary, announced the decision of the London Government also to abide by the arrangement of 1817. Gradually, members of Parliament turned from fortifications, and began to advocate plans for encouraging the settlement of Canada. The long-tried plan which had prevented a competition of expenditure upon the historic waterways was still considered a precedent worthy of imitation. The fact that the slave Confederacy was, notwithstanding former prophecies of British statesmen, now in its death-struggle, no longer rendered it necessary for the United States to adopt stringent measures for the preservation of the nation. Neither England nor America desired to embark into a policy of non-intercourse and armed frontiers, but rather to decrease the national prejudices which frowning fortresses would only serve to nourish.

There was an ambiguity in Mr. Seward's note of March 8 which might have caused misapprehension as to whether the previous abrogation had been rendered inoperative.<sup>1</sup> This led to some further correspondence between the two governments. In Mr. Seward's note to Mr. Adams he had said:

"You may say to Lord Russell that we are quite willing that the convention should remain practically in force; that this government has not constructed or commenced building any additional war vessels on the lakes or added to the armament of the single one which was previously its property; and that no such vessel will in future be built or armed by us in that quarter. It is hoped and expected, however, that Her Majesty's Government, on its part, so long as this determination shall be observed in good faith by that of the United States, will neither construct nor arm nor introduce armed vessels in excess of the force stipulated for by the convention referred to."

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<sup>1</sup> 20 Instructions, No. 1289, p. 89.



The British Government was apparently not satisfied with the wording of this note, and on June 15, 1865, the British minister wrote to Acting Secretary Hunter to ask whether Mr. Seward's dispatch of March 8 was intended as a formal withdrawal of the notice given November 23, 1864, or whether the Agreement of 1817 was now virtually at an end, leaving the matter of disarmament resting merely upon the good pleasure of each party.<sup>1</sup> "In the latter case," he said, "a very inconvenient state of things would exist," and he was directed to say that in the opinion of Her Majesty's Government the best course would be formal withdrawal of the notice of November 23, 1864. On June 16, 1865, Mr. Seward answered that the dispatch of March 8 was intended as a withdrawal of the previous notice within the time allowed, and that it is so held by the Government of the United States.<sup>2</sup> On August 19, 1865, the British minister once more wrote to Mr. Seward to say that his government understood from the notice that the agreement contained in the convention of 1817 would continue in force unless it should be thereafter terminated by a fresh six months' notice.<sup>3</sup> On August 22, 1865, Mr. Seward replied that the statement of Her Majesty's Government was accepted as a correct interpretation of the intention of the Government of the United States.

There was some further correspondence soon after in regard to revenue cutters, which was significant at this time. November 3, 1865, Mr. Bruce asked explanations as to several vessels which had recently been built by the United States for the lakes. Seward replied November 4 that they were for revenue purposes, and that their armament would not exceed the limit stipulated in 1817.<sup>4</sup> The prodigious development of physical power in the United States continued for a time to be a source of some alarm both in Canada

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<sup>1</sup> 78 Notes to State Department.

<sup>2</sup> 13 Notes from State Department, p. 358, June 16.

<sup>3</sup> 78 Notes to State Department.

<sup>4</sup> 13 Notes from State Department, p. 438.

and England. With the fall of the Confederacy there was fear that idle soldiers would threaten Canada. In Canada the danger from the United States had been used as an argument in favor of the International Railway and the confederation of the British provinces. Members of Parliament felt that the continuance of the bond with Canada depended partly upon the good-will of the United States, and they were not so sure that the American policy of extension was not one of conquest. They sometimes mistook the momentary utterances of swaggering officers and demagogues for the abiding will of the great American people. Territorial aggrandizement has never been the passion of the North.

It is doubtless true that at the close of the Civil War many in the United States thought that in a few years Canada would be constrained for commercial reasons to knock for admission into the American Union, but it would have been a departure from the American policy to annex Canada by force. In the heat of excitement the press often assumed a threatening tone, and "colonels" for effect referred to the boundaries which "God Almighty had established," reaching to the Aurora Borealis on the north; Fenians organized to carry the green flag into Canada, and a congressman moved to grant them the right of belligerents; but if the government may be said to have had any policy in regard to Canada it was certainly not one of forcible incorporation. Its forcible incorporation could only have brought an element of disaffection into the nation. The disbanding of vast armies at the close of the Civil War, leaving irritating differences with England to be settled by diplomacy, was a triumph of the American principle. Stump orators had pandered to Anglo-phobia, British peers had harangued, American and British papers had screamed for bread, but the nations did not go mad. The common-sense of the people and the wisdom of their governments prevailed, and the countries were not plunged into disastrous war.

## VII.

### AFTER THE STORM.

#### THE ADJUSTMENT OF IRRITATING QUESTIONS AND THE CONTINUATION OF THE AGREEMENT OF 1817.

After the four years of fighting on bloody battlefields the Father of Waters flowed unvexed to the sea, with both its mouth and its springs in the control of one nationality. After the shock of civil conflict had ended, a united people, without slavery, stood with a confidence born of experience ready to meet the problems of the future. The struggle of interests had developed character and thought. During the tempestuous reign of Andrew Johnson there was some fear that the strength of the nation would lead it into an offensive foreign policy. That the United States Government had no such policy in view is seen by the promptness with which disarmament was secured after the long struggle. The expulsion of the French from Mexico and the purchase of Alaska were not inspired by the desire of dominion.

The feeling which had been engendered against England during the war, however, led Fenians and others to hope for a chance to invade England's dominions. In May, 1865, the report of a scheme to annex Canada was brought to the attention of the State Department by Mr. Bruce, of the British legation.<sup>1</sup> One George W. Gibbons had advertised in the Brooklyn Eagle for three thousand volunteers to join a larger body for the invasion of Canada or Mexico. In one of his letters Mr. Gibbons said: "If we can get the consent of the President of the United States we will. If not, we will go anyhow." In another he said that he had three thousand

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<sup>1</sup> No. 78 Notes to State Department, May 19.

men enlisted, and that the intention was "to declare war on Great Britain by invasion of Canada." Mr. Bruce, in calling the serious attention of the United States Government to this scheme, was correct in his conviction that the United States would take prompt steps to stop the "audacious proceeding."

The Fenians for several years after the close of the Civil War continued to threaten Canada. This organization had been in existence from the time that the Irish attempted to throw off the imperial rule of England. A branch was formed in the United States in 1857. During the Civil War its membership had increased fivefold. In June, 1866, two hundred Fenians, under their leader, O'Neill, crossed the river some miles below Buffalo and prepared to carry the green flag into Canadian territory.<sup>1</sup> The United States Government had sent the *Michigan* to patrol the river, but it arrived late. Several brave Canadians were killed while defending their country. The Fenians drove the Canadian forces as far as Ridgway, but here their attempt to invade Canada ended. The United States Government soon took decisive action. The *Buffalo Express* stated that but for this fact fifty thousand Fenians would have overcome Canada. General Grant placed General Berry, with thirteen companies, in charge of the frontier. A revenue cutter was also sent to patrol the river. It was felt at this time that a British gunboat was "needed in these waters," to aid those of the United States in preventing another invasion.<sup>2</sup> The Canadian Government was satisfied with the exertions of the United States, but thought it prudent to place three or four steamers on the St. Lawrence river and the lakes. These were manned by sailors from the war-ships in port at Montreal. On June 8, Lord Monck notified the Colonial Secretary as follows:

"With the assistance of the officers and men of the ships of

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<sup>1</sup> See *Buffalo Express*, May 31, 1891. Also, O'Neill : Fenian Raid (Official Report).

<sup>2</sup> *Toronto Weekly Leader*, June 8, 1866.

war now in the St. Lawrence, a flotilla of steamers has been chartered by the Provincial Government and fitted up as temporary gunboats for services both on the St. Lawrence and the lakes."<sup>1</sup> On June 19, Lord Monck requested Admiral Hope to detach, if they could be spared, four gunboats "for service on the lakes adjoining the Canadian front, in the event of any renewal of the late attack on the Province by the Fenians." It appears that a large frigate and a corvette were sent to the St. Lawrence by the British Government three successive years. In 1868 it was decided that no reduction should be made for that year, though there was some doubt expressed as to the necessity of it "as well as of the expediency of sending crews . . . to man hired steamers for the Canadian Government."<sup>2</sup>

Fortunately, there was no further immediate occasion for increasing the lake forces. Fenianism was a delusion. As the year drew to a close it seemed to be on the decline. The poor laborers and chambermaids were finding it to their economic advantage not to respond to the calls to furnish money to "head centres" and mock "senates." The Fenians did not get the sympathy that they had expected in the United States. Most of the newspapers opposed their lawlessness. A rampant congressman proposed that they be accorded the rights of belligerents, but he did not represent the great common people of the nation. Congress asked the President to intercede for the Fenians who had been taken prisoners in Canada, and after their release they were not prosecuted in the United States;<sup>3</sup> but this was done because it was felt to be the most efficient policy at that time, to bring the affair to an end. The government took a firm stand against violation of the peace. The postmaster of Buffalo, who was a Fenian, was promptly removed from office by President Johnson.<sup>4</sup>

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<sup>1</sup> Correspondence Relating to Fenian Invasions and Rebellion of Southern States, p. 141. Also, see page 145.

<sup>2</sup> *Ib.*, p. 164.

<sup>3</sup> H. Doc. 154, 39-1, Vol. 16, July 26, 1866.

<sup>4</sup> *Toronto Weekly Leader*, Aug. 31, 1866.



It would be hard to say what were all the elements of the American political feeling concerning Canada at this time. It is safe to say that there was no intention of plunging the country into another war by invading a foreign country. There was no general desire to appropriate forcibly foreign territory. Only in case of war with England was there any danger of the United States striking a blow at Canada. There was, however, an impression that the disadvantages following the abrogation of the Reciprocity Treaty would cause the Canadians to apply for admission to the United States. The *Chicago Tribune*, in January, 1866, said: "The Canadians will soon discover that free trade and smuggling will not compensate them for the loss of the Reciprocity Treaty. They will stay out in the cold for a few years, and try all sorts of expedients, but in the end will be constrained to knock for admission into the Great Republic."<sup>1</sup> In February, 1866, when commissioners from Canada ventured to suggest before a congressional committee at Washington that it would be to the advantage of both countries if the intervening waterways were neutralized in regard to commerce, Mr. Morrill, the chairman of the committee, said: "That will have to be postponed until you, gentlemen, assume your seats here."

The big ideas in regard to the "manifest destiny" of the United States which had been expressed by Polk in 1844, and Douglas in 1858, had not ceased with the fall of slavery. In 1866, one could hear talk in favor of "admitting British America into the American Union as four separate States." In December of that year, Thaddeus Stevens, in a public meeting at Washington, said that the United States would embrace the continent. Some American politicians, after the purchase of Alaska, spoke of hemming in the possessions of Great Britain by the purchase of Greenland. Discussions over the *Alabama* claims, and over other questions which had kept animosities alive, naturally led to a consideration

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<sup>1</sup> *Chicago Tribune*, Jan. 6, 1866.

of the relation of Canada in case of a war. It was not a time favorable for the negotiation of a new reciprocity treaty. Mr. Chandler, of Michigan, in the heated debates of 1869, said that England should give up Canada to the United States, and announced that sixty thousand Michiganders were ready to overrun it. In 1870, Senator Pomeroy offered a resolution in favor of inquiring into the expediency of negotiating with Great Britain concerning the annexation of Canada.<sup>1</sup>

For two or three years before the Treaty of Washington in 1871 there was a revival of Fenian hopes for the invasion of Canada. In 1869-70 there were various rumors of their projects. On March 3, 1870, the United States District Attorney for Northern New York notified the Government at Washington that he had information of a proposed concerted movement against Canada at several points upon the frontier, and he thought it was advisable "to place the United States steamer *Michigan* and the revenue cutters upon the lakes, in such condition that they could go into commission upon short notice."<sup>2</sup> Rumors of this kind were so common at the time that not much importance was attached to them. By an act of Congress the lake revenue cutters had been laid up for about three years, and could not have been made available without expensive repairs. The *Michigan*, however, could have been prepared for active service as soon as the ice was sufficiently broken for navigation.<sup>3</sup> The government evidently did not deem it necessary to increase the forces on the lake frontier. The President soon found it necessary to issue a proclamation against the Fenians, however. There was an attempted invasion of Canada by five hundred men from Vermont in May, but the attack was frustrated. Dur-

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<sup>1</sup> Misc. Doc. 140, 41-2, May 19, 1870.

<sup>2</sup> Miscellaneous Letters, March 7, 1870. Attorney General Hoar to Secretary Fish, enclosure.

<sup>3</sup> Miscellaneous Letters, March 10, 1870. Secretary of Treasury Boutwell to Secretary of State Fish. Also, Secretary of Navy to Secretary of State.

ing the next year Canada had to call out troops at three different times in order to defend the frontier from threatened attacks of the Fenians,<sup>1</sup> and there was some complaint that the United States had not been vigilant enough in preventing the organization of lawless bands.

After long negotiations the amicable settlement of irritating questions between England and the United States was finally arranged by the Treaty of Washington in 1871. It provided for the arbitration of claims of the United States against Great Britain for the damage done by Confederate vessels fitted out in English ports during the Civil War. It also provided for the settlement of claims against the United States on account of the interference of American fishermen in Canadian waters since the abrogation of the Reciprocity Treaty. There were various clauses in the treaty which directly affected the relations between Canada and the United States. It provided for a clearer definition of the north-western boundary. The navigation of the St. Lawrence was to be forever free and open, for commercial purposes, to the citizens of the United States. As an equivalent for certain fishing rights on the coast, British subjects were to have, with certain restrictions, free navigation of Lake Michigan. Goods were also allowed to be carried "in bond" across the border. Great Britain agreed to urge the Government of the Dominion of Canada to grant United States citizens the use of the Welland, St. Lawrence and other canals on terms of equality with the Canadians. The United States granted to British subjects the free use of the St. Clair flats canal, and agreed to urge the State governments to secure to them the equal use of the State canals connecting with the navigation of the lakes or rivers along the boundary. Canada had urged England to secure compensation for the wrongs done the former by the Fenian raids, but the United States claimed that this subject had not been mentioned in previous corre-

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<sup>1</sup> Sir John McDonald, Premier Minister of Canada, in Canadian Commons, May 3, 1872.

spondence, and the point was dropped. For awhile it was feared that Canada would reject the treaty. The Dominion Prime Minister saw the danger of a "transfer of the recent feeling against England," and secured the ratification of the treaty, so that Canada could turn to a life of industry.<sup>1</sup>

There was an improvement in good feeling as soon as the Washington treaty received the sanction of the American Congress. Newspaper men of the United States turned to Canada to spend their summer vacation.<sup>2</sup> Excursionists from Canada visited the United States. This had a good effect in allaying angry feelings. While bloody war was being waged in Europe the wish in America was that we might long be able to "settle our strifes with no deadlier ordnance than diplomacy and negotiations."

From that day to this, though there has been no necessity for border defenses, various controversies have arisen at different times. Canadians have complained because they did not get the free use of certain state canals which they supposed they had secured by the treaty of 1871. When Canadian authorities protested, the United States Government replied that it had no control over state canals and could not compel States to act in the matter. Because in 1885 the United States refused to pass through the Sault Ste. Marie canal a Canadian vessel loaded with troops on their way to suppress the Riel rebellion, and because in 1892 President Harrison, in order to retaliate for discrimination against United States commerce,<sup>3</sup> ordered the levy of discriminating tolls on freights passed through this canal bound for Canadian ports, the Canadians have been led to build a canal of their own on the opposite side of the river. Tariffs have often ruffled the temper of the people on the border. Vari-

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<sup>1</sup> Sir John McDonald, in Canadian Commons, May 3, 1872.

<sup>2</sup> *Toronto Weekly Leader*, April 21, 1871. Also, see issue of July 28.

<sup>3</sup> Canada had granted a 90 per cent. rebate of tolls on the St. Lawrence traffic.

ous attempts at securing a new reciprocity treaty have failed.<sup>1</sup> Lack of free commercial intercourse after 1866 led many Canadians to favor a commercial union with the United States. This would have involved a break from their connection with England, which the Canadians would hardly have desired. Canada, though a democracy, still clings to some of the paraphernalia of monarchy. After 1873 the demand for protective duties became general among large classes of Canadian people. The Canadian Government in 1874, still desired freedom of trade, and obtained the consent of England to open negotiations with the United States for satisfactory commercial relations. Sir Edward Thornton, the British minister, and Honorable George Brown, a Senator of Canada, were accredited as joint plenipotentiaries to negotiate a treaty concerning fisheries, commerce and navigation with the United States. A treaty satisfactory to all three governments was agreed upon, but it was rejected by the United States Senate. Four years later there was a feeling in favor of freer commercial relations with Canada, but financial difficulties in the United States stood in the way of bringing negotiations to a successful end. In the fall elections of 1878 the protectionists were successful in Canada, and at the next session of the Dominion Parliament a tariff was enacted. Since that time both countries have found occasion to complain of new tariff bills. The American Congress has placed duties on coal, lobsters, eggs, etc.; Canadian legislation has excluded American cattle, and laid a retaliatory tax on lobster cans. Americans have responded to Canadian retaliation by threatening to stop the transmission of goods in bond and by new tariff provisions. New tariffs will doubtless continue to be the source of more or less irritation.

The question of fisheries has also been a source of considerable friction. In 1878, when Congress appropriated money for the payment of the Halifax award, it inserted a clause

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<sup>1</sup> See Sen. Misc. Doc. 4, 40-2, Vol. 1., Dec. 9, 1867; Sen. Exec. Doc. 19, 41-2, Vol. 1, Dec. 22, 1869; H. Misc. Doc. 50, 43-2, Vol. 2, Jan. 25, 1875; H. Rps. 1127, 46-2, Vol. 4, Apl 23, 1880, and June 7, 1880.



saying that articles eighteen and twenty of the Treaty of 1871, referring to the coast fisheries, should be terminated as soon as possible. On July 1, 1883, the President of the United States gave notice of the desire of the United States to terminate these articles, and they came to an end July 1, 1885. On the question of lake fisheries, the Canadian Government has had some reason to complain. While by stringent restrictions on fishing it has endeavored to prevent the depletion of fish in the lakes, there is, on the American side, where the spawning grounds are almost entirely located, no uniformity of restriction in the state laws, and Canada suffers equally with the United States from the abuse of privilege by which American fishermen have made inroads into the young fish. The fish have discovered that they are safer on the Canadian side of the line, and are found there in larger quantities. This fact has attracted American fishermen to steal across the boundary line, where they are subject to seizure. Several crews have been taken prisoners by the British revenue cruiser *Petrol*, their boats and tackle confiscated, and the men imprisoned for a time.

The clash of interests has at times produced much feeling, but there has been no desire by either party to create a system of rival defenses on the lakes. It is not improbable that possible future exigencies have several times been considered, but the *Michigan* has remained the only naval vessel upon the inland "high seas." In 1878 it was thought advisable to replace the *Michigan* by a better vessel, but it was thought that such a change might be an infraction of some treaty. In November of that year Mr. R. W. Thompson, Secretary of the Navy, inquired of the State Department whether any of the provisions of the Agreement of 1817 had been abrogated.<sup>1</sup> He was informed that the agreement was still in force.<sup>2</sup> A few days later, in his annual report, Mr. Thompson said in regard to the *Michigan*: "The vessel

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<sup>1</sup> Miscellaneous Letters, Nov. 20, 1878. (Unofficial.)

<sup>2</sup> 125 Domestic Letters, p. 334. (Unofficial.)

is now very much out of repair, and requires extensive work to be done upon her in order to keep her in condition for service. If the obligation of 1817 remains in force, this would require a large expenditure of money, and it would probably be more economical to sell her, and apply the proceeds, as far as they would go, to building a new ship for special service." Mr. Thompson thought that whether the Agreement of 1817 was still in force since 1865 depended upon the decision of Congress. Congress took no action toward providing a new lake vessel.

In the spring of 1890 there were several petitions and memorials, especially from Chicago clubs, urging that it would be prudent to replace the deteriorated steamer *Michigan* by a sound vessel. It was stated that the United States should be adequately represented at the World's Fair, and "that if this vessel is seen by the foreign visitors to our country, during her annual cruise through the Great Lakes, it will become a matter of reproach to our government, and excite ridicule in those familiar with the superior modern vessels of other nations."<sup>1</sup> These memorials were referred to the Committee on Naval Affairs, but no further action was ever taken.

In 1892, at the time of the Behring sea controversy, it was reported that the Canadian Government was building three "vessels of war," which they styled "revenue cutters." The character of these vessels did not escape official attention. In the New York Recorder of March 8 the Washington correspondent says:

"The character of the revenue-cutters, as ascertained by the official investigation conducted by the Treasury Department, is believed by those who have looked into the question closely to be a violation of treaty rights to which the United States ought not to submit without some kind of a protest. Each one of the projected revenue-cutters would be available in case of hostilities for the purpose of actual warfare, and

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<sup>1</sup> In File Office of House of Representatives.

would far outclass any vessels which would be at the disposal of the United States on the Great Lakes.

"Their presence in the lakes will be a constant menace, and as they are not needed for the legitimate objects of the revenue service, it is the opinion of Representatives and Senators who have been approached upon the subject to-day that Great Britain should be asked respectfully but firmly to explain their presence on the lakes, and if that explanation is not satisfactory, to abandon the idea of launching them.

"Any action of the Canadian Government looking to a strengthening of its forces in that quarter of the world just at the present time, when the Behring sea question has reached so critical a stage, can not, in the judgment of public men in Washington, be regarded with equanimity."

It does not appear that the United States Government ever objected to these modern "cutters." It was doubtless felt that there was no breach of treaty stipulations. United States cutters were also built, so that they would be capable of easy transformation into tight gunboats and dispatch vessels, in order that they might form an adjunct to the United States navy in case of necessity.<sup>1</sup>

Besides the naval vessel *Michigan*, the United States at this time had three revenue cutters stationed on the Great Lakes. The stations, tonnage, and armament of the vessels were as follows, viz.: Steamer *Perry*, at Erie, 281.54 tons, two 3-inch breech-loading rifles; steamer *Fessenden*, at Detroit, 329.81 tons, one 30-pounder Parrott, two 24-pounder Dahlgren howitzers and two 3-inch breech-loading rifles; steamer *Johnson*, at Milwaukee, 449 tons, one 30-pounder Parrott and two 24-pounder Dahlgren howitzers. A new revenue vessel of 450 tons was also proposed for the

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<sup>1</sup> The Navy Department has very recently been asked to lend the old warship *Yantic* to the Michigan Naval Reserves. The vessel would have to be taken to the lakes through the St. Lawrence. The Naval Militia is not under the control of the Federal Government, but the sending of the *Yantic* to the lakes might be interpreted as an attempt to evade the terms of 1817.

lakes by an act of Congress in March. She was to replace the *Johnson*, which needed repairs. Besides these, the *Ann Arbor* and other vessels owned by United States citizens were built so they could be converted into vessels of war in case of future hostilities.

The consideration of the Agreement of 1817 was brought before Congress in 1892, not on account of the size of Canadian vessels, but by an interpretation placed upon the agreement by the Secretary of the Navy. In 1890, F. W. Wheeler & Co., of West Bay City, Mich., had made the lowest bid for the construction of the *Bancroft*, a practice ship for the use of the Naval Academy at Annapolis, Md., but their bid was not considered, because it was thought that the construction of such a vessel might be held to contravene the Agreement of 1817.<sup>1</sup> Senator McMillan, of Michigan, thought that this was unfair to the inland ship interests. On April 5 he presented a petition from the iron-ship builders of the Great Lakes praying for the early abrogation of the treaty of 1817.<sup>2</sup>

There was some doubt as to whether the Agreement of 1817 was still in force. Treasury officials were inclined to believe it had been abrogated by the notice which was ratified by Congress on February 9, 1865. This fact, together with the reported character of Canadian cutters, led Mr. McMillan, on April 11, to offer the following resolution, which was adopted:

*“Resolved*, That the Secretary of State be, and he is hereby, directed to inform the Senate whether the agreement entered into between the United States and Great Britain in the year eighteen hundred and seventeen, covering the question of the naval force to be maintained by the two governments on the Great Lakes of the United States, is now held to be in force by the Department of State, and what, if any, action has been taken by our government to revive or put in force the terms of said agreement, and if so, under

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<sup>1</sup> Exec. Doc. 95, 52-1, May 6, 1892.

<sup>2</sup> Journal of Senate, April 8, 1892. *Chicago Tribune*, April 9, 1892, p. 10.

what authority or action on the part of our government such agreement has been held to be in force since the giving of the required formal notice by the President to Great Britain in December, eighteen hundred and sixty-four, of a desire on the part of the United States to annul said agreement at the expiration of the six months from the date of said formal notice, and the ratification of said notice by the act of Congress of February ninth, eighteen hundred and sixty-five."

At this time the conflict of economic interests was the source of some unpleasant feeling toward Canada. The Lake Carriers' Association complained of the Canadian canal tolls. There was also a renewal of an attempt to get national aid in constructing a ship canal from the Great Lakes to the Hudson river. As usual, the canal was advocated for military as well as commercial reasons. A representative of the Deep Water Ways Association, on February 1, before the House Committee on Railways and Canals, stated that in case Great Britain should ever give notice to terminate the Agreement of 1817 the vast American commerce of the lakes would be at the mercy of the light-draft vessels which they could soon force through the canals from the St. Lawrence. He went on to say:

"Commercially considered, a waterway from the lakes to the sea would be worth a hundred-fold its cost, although that cost will necessarily be large; but considered from a military point of view, it seems to me that this great nation can no longer afford to leave the commerce and the cities of our northern lakes in their present defenseless condition. We have not a fort or a gun worthy of the name on all the chain of lakes, and no possible way to put into the lakes a single vessel of war, while the other nation owning the territory on the north can put her whole naval armament with the exception of a few vessels into these lakes and have our cities and our commerce absolutely at their mercy unless we prepare some way in which to meet them."

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<sup>1</sup> H. R. 1023, 52-1, Feb. 1, 1892.



This statement must not be interpreted too seriously. Such papers as the *Chicago Tribune* and the *New York Times* held that a few forts for vital points were sufficient to keep British fleets out of the lakes in case of any future war.<sup>1</sup>

When Congress met in December the newspapers announced that a "complete disintegration of relations between Canada and the United States" seemed to be pending. President Harrison's message was characterized as "vigorously anti-Canadian in its tone," and the bill introduced by Senator Frye proposed to prohibit the transportation of goods through any part of the United States in Canadian cars, and providing under certain contingencies for the suspension of the transportation of Canadian goods in bond to or from any port in the United States. On December 7 the President sent to the Senate Secretary Foster's response to the resolution of Senator McMillan concerning naval forces on the lakes. Mr. Foster decided that the Agreement of 1817 was "to be regarded as still in existence;" that Mr. Seward's withdrawal of the notice for the abrogation of the arrangement was to be considered as authoritative as the notice itself, and that it would be unprecedented and inadmissible for England to do otherwise than accept and respect the withdrawal as it had been given, and that even if the continuance of the arrangement lacked express legislative action it at least violated no existing legislation. Mr. Foster thought, however, that the arrangement was unfit to meet modern conditions. He said:

"If as early as 1844 the Secretary of the Navy held that the sole consideration of steamers having taken the place of sailing craft for warlike purposes would justify a revision of the agreement; if the House of Representatives in 1864 regarded the opening of the Canadian canals as introducing an inequality incompatible with its engagements; and if, as Mr. Seward held in 1864, the informal arrangement of April, 1817, could scarcely have anticipated such a condition of

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<sup>1</sup> *Chicago Tribune*, April 13, 1892.

things as the maintenance of a marine force adequate to cope with domestic troubles or civil war on either side, it seems most desirable now, in view of the long lapse of time and the vast changes wrought in these and other no less important regards, that the arrangement now grown obsolete in practice, and surviving in the letter only as a declared guaranty of international peace, should be modified to fit the new order of things, and with such adaptation to the exigencies of the future as prudence may forecast."<sup>1</sup>

Secretary Foster's communication created a stir at the American capital.<sup>2</sup> It was the principal subject of conversation for congressmen in the hotels and lobbies. The general sentiment was hostile to the reopening of the question.<sup>3</sup> It was feared that any modification of the agreement might invite serious complications. Even Senator McMillan, who introduced the resolution of inquiry, said that he had come to the conclusion, after a full investigation of the subject, that England had everything to gain and the United States everything to lose by changing the agreement. He contrasted the almost barren shores of Canada with the populous manufacturing cities on the opposite American shores, and referred to the immense commerce in American vessels upon the lakes. A British gunboat of modern type would be a constant menace. He said that "the occasional privilege of building a small man-of-war vessel would not be an inducement for a change." Representative Chipman, of Michigan, a Democratic member of the Foreign Affairs Committee in the House, said that the armed vessel clause of the agreement should not be abrogated before the construction of ship canals around Niagara Falls to the tide-water of the Hudson river. He added: "The fact that Great Britain controls the St. Lawrence and the canals between Lake Ontario and Lake Erie must not be forgotten." Representative

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<sup>1</sup> Exec. Doc. 9, 52-2, Dec. 7, 1892, p. 34.

<sup>2</sup> *Washington Post*, Dec. 8, 1892. Also, Dec. 9, 22, 24, 25 and 27.

<sup>3</sup> *Detroit Free Press*, Dec. 9, 1892. *Chicago Tribune*, Dec. 9, 1892.

Herbert, chairman of Committee on Naval Affairs, believed that it would be a wise thing to leave the agreement unmodified. He said: "My own idea would be that it is best not to allow any war ships into the lakes during time of peace and, in event of hostilities, the proper thing to do, it seems to me, would be to seize the Welland canal with an army and then destroy it with dynamite. Such an act as this would make it impossible for England to get any of her ships upon the lakes." Even Senator Frye, of Maine, who had at first spoken in favor of the immediate abrogation of the agreement, by the last week of December was not much concerned about it. He did not think that England meant mischief upon the lakes.

The editorials in the Washington Post and a few other newspapers insisted that in view of the recent friction with Canada, in regard to fisheries and canal management, the character of the new Canadian vessels should not be viewed without apprehension. It was generally considered, however, that the Canadians had no hostile intentions. Mr. C. H. Tupper, of the Canadian Government, said in an interview concerning the relations between Canada and the United States that the vessels built by Canada on the Great Lakes were simply revenue cruisers and cruisers to protect the fisheries. He denied that their construction had in any way violated the treaty with the United States.<sup>1</sup>

In October, 1895, at a time when diplomatic relations with England were somewhat disturbed over the Venezuelan boundary question, a fresh discussion of the Agreement of 1817 was occasioned by the refusal of the Navy Department to award to the Detroit Dry Dock Company the contract for two twin-screw gunboats on which this company was the lowest bidder. Secretary Herbert, of the Navy, said that if the language of the Agreement of 1817 had been "build *and* maintain" instead of "build *or* maintain" the Detroit firm

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<sup>1</sup> London *Times*, Dec. 21, 1892, p. 5, column 5. Also, see *Detroit Free Press* for Nov. 29, 1892, p. 2.

should have had the contract. He would not reverse the decision of the previous administration. Judge Advocate General Lemly recommended the rejection of the Detroit bids on the ground that their acceptance would be in violation of the spirit if not the letter of the agreement. He even held that vessels could not be constructed on a lake port piecemeal and then assembled on the seacoast. The Detroit company appealed the case to President Cleveland. There was considerable newspaper comment against an arrangement which thus discriminated against lake shipbuilders.<sup>1</sup> Some of them spoke of the Canadian "cutters" as being a secret and underhand violation of the agreement, and asked, "why shall we not feel ourselves privileged to build gunboats for ocean use openly and above-board?" A prominent Eastern shipbuilder stated that it was "an outrage upon our national manhood and a disgrace to our flag," and that it was time for a "Declaration of Independence on the Lakes." In a letter to a member of President Cleveland's cabinet he said that "the whole treaty . . . ought to be torn up and consigned to the waste basket," and he thought that if the "rugged and forceful mind" of the President was brought to bear on the question he would be disposed to "act in the American fashion." Mr. Cleveland after thoroughly considering the matter approved the action of the Secretary of the Navy in rejecting the bids. He said: "The agreement made between the United States and Great Britain in 1817 contains a stipulation that no such vessels shall be 'built' on the great lakes. This agreement is too explicit to be explained away. While the passing of the exigency in which it originated and the change of conditions that have since occurred may furnish reasons for its annulment in the manner provided in the contract, they do not justify such a plain disregard of it as the carrying out of the bid of the Detroit Dry Dock Company would involve."<sup>2</sup>

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<sup>1</sup> Philadelphia *Ledger*, Oct. 25, 1895. Chicago *Times Herald*, Oct. 27 and 29. San Francisco *Chronicle*, Oct. 29. Toledo *Blade*, Oct. 29.

<sup>2</sup> Philadelphia *Times*, Nov. 3. Chicago *Post*, Nov. 2. Baltimore *Sun*, Nov. 4.

It was also claimed, probably correctly, that if occasion had arisen the British would have placed upon the Agreement of 1817 a more liberal construction, which would have allowed war vessels to be built on the lakes. Such an interpretation, however, could not be of much value to the ship-building interests of the lakes unless the United States had the right of passing war-ships through the Welland and St. Lawrence canals. A treaty or permit would be necessary to secure the passage of our gunboats through Canadian canals to the ocean. But, having denied Canada the privilege of passing her volunteers through the Sault Ste. Marie canal during the Riel rebellion, the United States Government would hardly desire to ask a similar favor of the Canadians,<sup>1</sup> and especially so when diplomatic relations were not the best. Even if such permission had been obtained, only boats of less than twelve feet draft would have been able to pass.

Notwithstanding this fact, steps were taken in November, 1895, to secure the abrogation of the agreement by Congress. The Detroit city council took the initiative in urging this policy.<sup>2</sup> Other lake cities were asked to join in the movement. The mayor, in his message to the council, said:

"Primarily, it is an injustice to the capitalists whose money is invested and the American architects whose brains are actively engaged, and to the myriad of mechanics whose labor, with the other quantities mentioned, has built the superb fleet of fresh water merchantmen which is the pride of the great lakes, that they are debarred from entering into legitimate competition with their competitors on the seaboard in the construction of vessels for the American navy."

A circular letter, sent by the mayor of Detroit to the mayors of the other lake cities, was in part as follows:

"The work of ship construction in the lake region has attained to a degree of prominence that demands some recognition from the general government in the award of con-

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<sup>1</sup> *Marine Record* (Cleveland), Oct. 31, 1895.

<sup>2</sup> *Detroit Free Press*, Nov. 8. *Detroit Tribune*, Nov. 9. *Port Huron Times*, Nov. 14.



tracts for naval vessels. And the excuse of a possible conflict between rival naval forces on the lakes, is no more to be accepted seriously than a possible conflict of the same naval forces in the Gulf of Mexico, or the harbors of Hawaii or China in time of peace. If a navy is to be maintained at all, there is as good reason for maintaining a fleet upon the Great Lakes as upon the eastern coast of the United States, and far greater reason, in view of the relative importance of the commercial vessel interest, than to maintain it on the Chinese or Japanese coast."

Considerable newspaper comment followed the publication of this circular.<sup>1</sup> It would be hard to analyze all the elements which influenced the discussion. Personal and local as well as national interests entered into the considerations. In some cases the desire to "attract" Canada was avowed. Some wanted a show of naval force to "protect" the lake commerce and to inspire "Miss Canada" with the respect which coy maidens have for strength and power. Others held that the timid maiden across the lines would become alarmed by the paraphernalia of war. Still others preferred friendship to matrimonial advances. Though there was no small expression in favor of a modification of the agreement, the agitation for its abrogation was unsuccessful. The *Detroit Tribune* held that any benefits which might flow from the abrogation would be dearly paid with a system of rival navies racing upon the waters where the United States had hitherto held absolute strategic possession. The *Chicago Tribune* said: "If England wants the agreement to stand and is willing to live up to it honestly, the United States should interpose no objection." In reply to the *Detroit* circular letter the mayor of Port Huron stated that he was not ready to join in an effort to abrogate a treaty which had "for over fifty years given the United States almost un-

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<sup>1</sup> *Detroit Evening News*, Nov. 14. *San Francisco Chronicle*, Nov. 11. *Chicago Tribune*, Nov. 15, 16 and 18. *Baltimore Herald*, Nov. 18. *Detroit Tribune*, Nov. 18. *Detroit Evening Press*, Nov. 19. *Port Huron Times*, Nov. 19. *Detroit Free Press*, Nov. 27.

disputed possession of our great inland seas upon which the white-winged messengers of American commerce, flying the American flag, manned by American seamen, built by American capital, pass and repass our very doors unmoled by a single ship of war." If the mayors of other cities favored the proposed abrogation the matter was at least never brought before Congress.

In the newspaper discussions it was claimed, perhaps with some grounds, that the British had in convenient warehouses an equipment which could transform some good Canadian lake merchant boats into dangerous war vessels. General Miles also called attention to this fact, and stated that "in case of a war with England this country would be at a frightful disadvantage on the lakes." He did not think a war with England was likely, but he contended that the United States should be prepared for any emergency. In November and December the newspapers were full of dispatches and editorials relating to the defense of the lakes.<sup>1</sup> In the Navy Department at Washington it was proposed to accumulate a supply of rapid-fire rifles, so that the large American lake vessels could be rapidly armed and converted into gunboats in case of an emergency. In this way it was said that a formidable fleet could quickly be put afloat on the lakes. Some men occupying front seats in their party spoke often of an approaching irrepressible conflict between the two great English-speaking nations, said it had as well come to blows as to be postponed, and began to settle plans of foreign alliances in their minds. But luckily they were not the guiding stars of that true American foreign policy which neither cultivates special enmities nor "entangling alliances."

The crisis in the Venezuelan dispute was reached a few days before Christmas, when President Cleveland, in a deliberately prepared message, announced the attitude of the

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<sup>1</sup> *Baltimore Herald*, Nov. 7. *Detroit Free Press*, Nov. 7. *Chicago Times-Herald*, Dec. 20. *Baltimore Herald*, Dec. 21. *Superior (Wis.) Leader*, Dec. 24. *Washington Evening Times*, Dec. 24.

United States. Affairs moved at a rapid pace for several days. The Canadian Government took steps to negotiate for lake vessels which could be converted into cruisers in case of war. Commercial interests were disturbed, and there were panics in securities, but the waves of belligerency which had been sweeping over the country for several months had already reached their greatest height. They rapidly subsided at the beginning of 1896, when it became evident that the English Government showed no disposition to precipitate a quarrel by adopting a policy which would call into question any interpretation which the United States Government might place upon the "Monroe doctrine." The Venezuelan question was adjusted satisfactorily to all parties. The relations between England and the United States became more harmonious than they had been for years. It was felt that future differences could be settled by the mutual good sense and righteous feeling of the two peoples. There was a growth of sentiment in favor of providing for the settlement of disputes by arbitration. The people on each side of the lakes continued their usual peaceful vocations, with no other source of irritation than that which arose from the conflicts of commercial interests.

Though another war with England is not a probable contingency, sources of friction are liable to arise in the future as they have in the past. International difficulties between England and the United States will hardly play so large a part in future American history as they have in the past. The principal questions for future adjustment in Anglo-American relations are likely to be connected with the British possessions in North America.<sup>1</sup> This fact has been urged as a reason why these dependencies should become a part of our great American Union. In December, 1894, Senator Gal-

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<sup>1</sup> The Behring Sea question has been the source of much discussion. It directly affects the relations between the United States and Canada. The discovery of gold on the upper Yukon may give rise to new international problems. Questions in regard to the eastern boundary of Alaska are liable to arise.

linger, of New Hampshire, offered a resolution for the union of Canada with the United States in order to stop the danger of war. In March, 1895, Senator Higgins, in a speech on the Naval Appropriation Bill, after referring to the military character of the Canadian Pacific Railway, and the inexpediency of assisting Canada in joint ship canals between the lakes and the St. Lawrence, said: "Every day that Canada remains a part of the British Empire she is a standing menace to us. . . . We shall be in an incipient stage of conflict until . . . the whole American continent is governed in peace under the dome of this Capitol."

A union of Canada and the United States, even if it should be favored by the people of the United States, is not feasible. The greatest objection would not come from England, but from Canada herself. Canada at present practically governs herself. She has her own system of taxation. Her tariff favors England no more than it favors the United States. Her people, with their present political freedom, have no desire to break their connection with the British Empire. In case future expediency should lead to their separation from the Empire their national aspirations would probably lead them to form an independent nation. It is at least certain that there is at the present time no widespread desire of annexation to the United States. William Kingsford, in the preface of his eighth volume on the "History of Canada," writes: "In Canada we can have no feeling towards the United States but the desire to be the best of neighbors and the truest of friends." Canada would oppose an imperial federation with England as much as she would oppose being annexed to the United States. Under present conditions she desires to work out her own destiny.

In case Canada should ever become one of the independent nations of the earth, there need be no more use of frowning fleets to darken the inland waters than there is to-day. There would probably be no desire to establish an armed truce in place of the neutrality which has existed during the long period since British fleets went to the bottom of Lake Erie.

If the waters of the Great Lakes, sometimes reposing in apparent sluggishness, and sometimes lashed into spray and rolling waves by the tempests which sweep over them, and always rushing to the sea through the St. Lawrence, are forever to separate two nations, they may nevertheless be the means of washing out all enmity between the people on their shores and aid in preserving one common civilization.<sup>1</sup>

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<sup>1</sup> It has been urged by many persons interested in the lake commerce that the United States and Canada should secure a co-operative arrangement for the joint improvement and use of the waterways connecting the lakes with each other and with the sea. (See Proceedings of International Deep-Waterways Association, Cleveland, 1895.)





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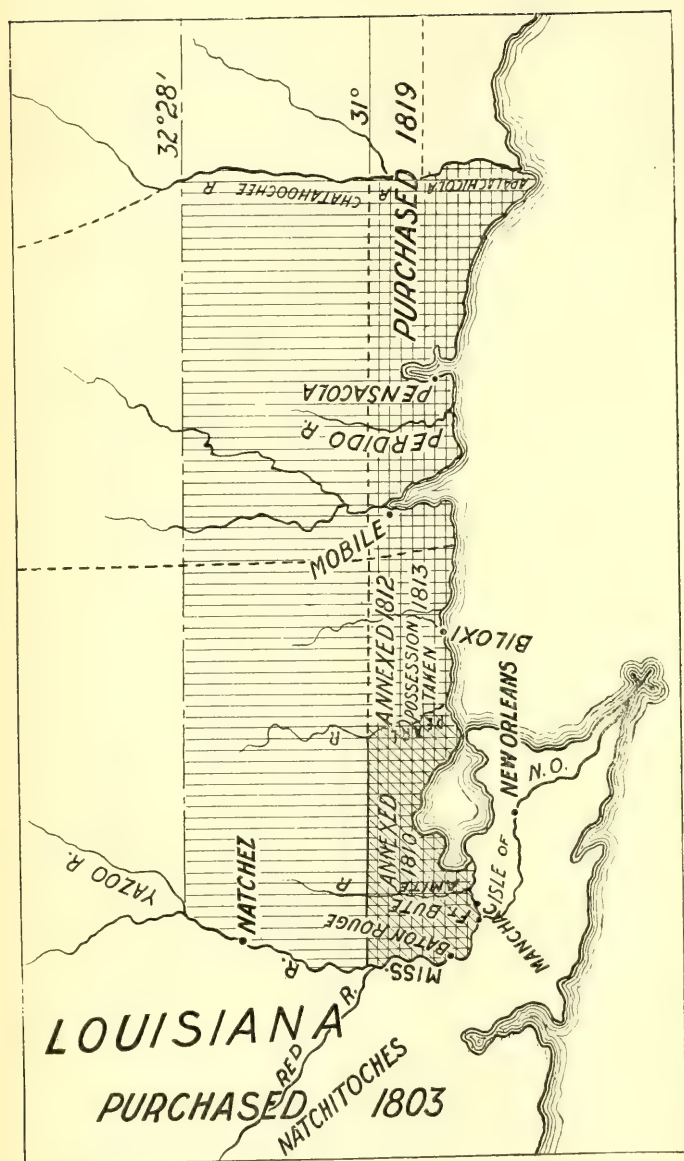
# WEST FLORIDA

AND ITS RELATION TO THE

Historical Cartography of the  
United States







BRITISH WEST FLORIDA.—Acquired by Great Britain 1763. Boundary of 32° 28' fixed 1767.

SPANISH WEST FLORIDA.—Acquired by Spain 1763. Northern Boundary fixed 1795. Pearl-Perdido portion annexed to Mississippi Territory 1812. Possession taken 1813. Perdido-Apalachicola portion acquired by Florida purchase of 1819.

INDEPENDENT STATE OF WEST FLORIDA.—Independence won by Revolt. Declared September 26, 1810. Annexed to U. S. by President proclamation, October 27, 1810. Added to State of Louisiana by Act of Congress April 14, 1812.

SERIES XVI

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History is past Politics and Politics are present History.—*Freeman.*

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WEST FLORIDA

AND ITS RELATION TO THE

Historical Cartography of the  
United States

BY

HENRY E. CHAMBERS,

*Fellow-by-Courtesy of Johns Hopkins University. Sometime Assistant Professor, Tulane University*

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# West Florida and Its Relation to the Historical Cartography of the United States.

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## INTRODUCTION.

West Florida, as a political and territorial entity, occupies an uncertain position in the minds of authoritative contributors to the history and cartography of the United States. For instance, McMasters<sup>1</sup> gives Florida as extending westward to the Mississippi, while Scribner's Statistical Atlas, dividing Florida into east and west, makes the western portion extend only as far as the Perdido river.<sup>2</sup> McMaster gives date of Florida's acquirement as 1819; Scribner as 1821.

McCoun's Historical Geography of the United States shows West Florida extending to the Pearl river in one place;<sup>3</sup> to the Perdido in another,<sup>4</sup> and indicates in a third place that the Floridas are yet Spanish possessions in the year 1820.<sup>5</sup> Albert Bushnell Hart gives West Florida, after the St. Ildefonso treaty, as extending to the Mississippi,<sup>6</sup> and dates the separate acquirements of East Florida and West Florida as 1819 and 1812, respectively.<sup>7</sup> Justin Winsor gives the claims of the Louisiana purchase as extending to the Appalachicola, the only authority within the knowledge of the present writer that extends the territorial limits of colonial Louisiana eastward beyond the Perdido.<sup>8</sup>

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<sup>1</sup> History of the People of the U. S., Vol. 2 (map).

<sup>2</sup> Plates 13, 14 and 15.      <sup>3</sup> Map of date 1787.      <sup>4</sup> Map of 1790.

<sup>5</sup> Map of 1820.      <sup>6</sup> Formation of the Union Map, No. 4.

<sup>7</sup> *Ib.*, Map. No. 1.      <sup>8</sup> *Nar. and Crit. Hist. of America*, Vol. 7, p. 531.

Henry Adams, after a most critical examination of the records bearing upon the Louisiana purchase, makes no inclusion of the Mississippi-Perdido region.

B. A. Hinsdale, in his *Historical Geography of the New World*,<sup>1</sup> says:

"The first Louisiana was the Mississippi Valley, together with the country east and west, draining to the Gulf of Mexico from the Perdido to the Rio Grande. The second Louisiana was the western half of the valley and the island of New Orleans. This was the Louisiana purchase of 1803. \* \* \* Long before this time (1763) the founding of Louisiana by the French had cut Florida short on the west of the Perdido river."

If Florida was cut short at the Perdido river, and the Louisiana purchase of 1803 included only the island of New Orleans east of the Mississippi, this leaves the territory between the Perdido and Mississippi rivers to be accounted for.

An examination of fourteen standard and representative school histories of the United States<sup>2</sup> reveals similar contradictions and discrepancies. The majority of them give Florida as extending to the Perdido river, and include the region between the Perdido and the Mississippi in the Louisiana purchase. Only two<sup>3</sup> agree with McMaster. Adams, Hinsdale and Hart, in defining the limits of the Louisiana purchase as including nothing east of the Mississippi river, save the island of New Orleans.

Other citations might be made, but the foregoing indicate that a mistiness obscures the region between the Perdido and the Mississippi, historically considered, a mistiness that we look in vain to general historical narratives to dispel.

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<sup>1</sup>How to Study and Teach History (International Educational Series, edited by W. T. Harris), page 184.

<sup>2</sup>Eclectic, Chambers', Barnes', Shinn's, Scudder's, Johnston's, Anderson's, Swinton's, Sheldon's, Cooper's, Mowry's, Montgomery's, Eggleston's, and Niles'.

<sup>3</sup>Chambers' and Sheldon's.



That the history of West Florida has not been more clearly set forth need occasion little surprise. Exploration, occupancy, conquest, treaty and revolt, have caused the region in question to change ownership and jurisdiction no less than six times. Perhaps this can be said of no other portion of American soil. Need we wonder, then, that they who have pursued with certain tread the broad highway of national events, have hesitated to turn aside into a by-path of so devious a winding.

It is the purpose of this paper to point out wherein lie the causes of these divergencies of opinion and to remove, if possible, some of the obscurities which have brought about contradictions similar to those given. These causes may be reduced in number to two.

(1) *Historians have failed to recognize that in limits and political jurisdiction there have existed no fewer than three separate and distinct West Floridas.*

The first of these was *British West Florida*, extending north to the parallel drawn through the mouth of the Yazoo river, in the present State of Mississippi ( $32^{\circ} 28'$ ), and lying between the Chatahoochee and Mississippi rivers. Organized in 1763 as a royal province, its boundaries determined as above in 1767, it constituted for twenty years the fourteenth of the English colonial possessions in what is now the territory of the United States.

The second was *Spanish West Florida*, constituted with the same limits as the above until 1795, when by treaty between Spain and the United States its northern extent was shortened to the parallel  $31^{\circ}$ , which to this day forms, in part, the boundaries of Florida, Alabama, Mississippi, and Louisiana.

The third was the *Independent State of West Florida*, of short but active existence, whose limits were: on the north, the line as given above ( $31^{\circ}$ ); the Pearl River, on the east; Lakes Borgne, Pontchartrain and Maurepas, and the River Iberville, or Bayou Manchac, on the south; and the Mississippi, on the west.

(2) *Historians have too readily accepted the dicta of Madison and Livingston, Secretary of State and Minister to France, respectively, when the Louisiana purchase was made, that West Florida was included in the Louisiana purchase, when the weight of historical and contemporary testimony is directly opposed to any such inclusion.*

Those who have given this testimony due consideration, give Spanish Florida as extending to the Mississippi, but fail to agree as to whether the Perdido or the Chatahoochee is the dividing line between East and West Florida. Those who have accepted Madison and Livingston's theory, fix the western boundary of Spanish Florida at the Perdido river and, recognizing that West Florida must be given historical existence of some kind or other, assign to it the narrow limits between the Chatahoochee and the Perdido.

In our search for the truth we shall consider in brief West Florida under a succession of jurisdictions, and then endeavor to show the unsoundness of Livingston's and Madison's claim that West Florida was included in the Louisiana purchase.

PART I.

The Three West Floridas.



## PART I.

### THE THREE WEST FLORIDAS.

#### I.—ANTE-COLONIAL HISTORY.

The political history of West Florida begins with the year 1763, when England, having come into possession of the greater part of North America, organized the region between the Mississippi and Chatahoochee into a Royal Province, and thus added one more to the list of her colonial possessions within the present limits of the United States.

But back of its political history is a territorial history; and as the narrative of an American State is generally preceded by some account of the region in which the life and institutions of the State have arisen, so will our subject be brought into clearer historic view by a brief reference to some of the most significant events connected with the period of American beginnings.

The successful termination of the first voyage of Columbus, bringing, as it did, a knowledge of the existence of the New World within the practical comprehension of the nations of Western Europe, was immediately followed by Spanish occupancy of the principal islands of the West Indies.

With Cuba and Jamaica as bases, Spanish exploration soon extended to the mainland of North America. In one direction went De Leon upon his famous search for the fabled island of Bimini, during the course of which he discovered and named Florida (1512); in another, Grijalva, who reached and explored the coast of Mexico (1518).

De Leon was followed by De Ayllon, whose expeditions



took him, first, to the coast of what is now South Carolina, then called Chicora (1520) and subsequently to the Chesapeake Bay. Grijalva was followed by Cortez, whose conquest of the Aztec realm constitutes one of the saddest of the earlier pages of American history (1520).

With the exploration of the coast line between Florida and Mexico the names of Alonzo de Pineda and Pamfilo de Narvaez are most prominently identified. Pineda was dispatched by Francis de Garay, governor of Jamaica, with a well-equipped expedition to seek out some passage-way through the land to the ocean beyond. He skirted the coast from Cape Florida to Mexico, touching at various points, and taking possession (1519). Upon his return, he is supposed to have discovered and entered the Mississippi river, bestowing upon it the name *Espiritu Santo*.<sup>1</sup>

Pamfilo de Narvaez, who had been discomfited in his endeavor to wrest from Cortez by force the honor of conquering Mexico, undertook the conquest of Florida (1528). His expedition was an ill-fated one, for, after a fruitless march into the interior of western Florida, the would-be conquerors returned, disappointed, to the coast, constructed five frail craft, which they loaded to the gunwale, and proceeded slowly to the westward. They, too, are supposed to have beheld the mouth of the Mississippi, whose swift flowing current wrought havoc to their heavily laden boats. A storm did the rest. Eight years afterward, Cabeza de Vaca, Castillo, Dorantes, and a negro arrived in the Spanish settlements<sup>2</sup> of Mexico—sole remnant of the six hundred that had set out with De Narvaez. They had made their way overland to the Pacific, and then southward to their compatriots.

With a large and carefully selected body of men, Hernando De Sota landed at Tampa Bay (1539), bent upon accomplishing what De Narvaez had failed to do. The

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<sup>1</sup> Winsor : *Narrative and Critical History*, Vol. 2, p. 237.

<sup>2</sup> Winsor : *Narrative and Critical History*, Vol. 2, p. 245.

story of his memorable march has often been told. It is a tale of dogged determination of purpose on the part of the commander, of unswerving loyalty on the part of his men. It is a narrative of endurance, courage, and fortitude, of disaster, pathos, and tragedy.

North, to the mountains of North Georgia; southwest, through the length of Alabama to the Indian town of Mauvilla,<sup>1</sup> where was waged their greatest battle; north-westward, diagonally across the present State of Mississippi, they made their way, the journey a series of harassings and savage baitings whose chronicle finds fit place among the nightmares of history. The Mississippi river was crossed a little below the site upon which now stands Memphis. It is probable that the Missouri line was reached before the invaders undertook to return. Slowly they made their way southward, their number lessening day by day. Soon they reached what is now north-eastern Louisiana. Here, amid the glooms of swamp and river bottoms, beset by vengeful foes, a remnant of the band gathered about their leader. Stubborn old soldier that he was, nothing but death could overcome him, and here it was that he succumbed. In the dead of night his body found a watery sepulchre in the river whose waters he had crossed in the fullness of his strength. His companions, reduced in number, eventually made their way by river and gulf to Mexico.

Thus it will be seen that through the explorations of De Leon, De Ayllon, De Narvaez, and De Sota the territorial claims of Spain reached north-westward from Florida into the heart of the American continent. From Mexico they extended north and north-eastward.

Spain maintained her right to these territorial claims in 1565, when Melendez de Aviles destroyed the Huguenot settlement in north-east Florida, and built St. Augustine, and this right went unquestioned until the year 1699.

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<sup>1</sup> Near Mobile.

## II.—FRENCH OCCUPANCY.

In the sixty years following the founding of Quebec (1608), the forerunners of French civilization in America reached the region about the shores of the great lakes. Among the first to come to the hither side and enter what is now the territory of the United States were Nicollet, Marquette, Joliet, Allouez, Hennepin, Du Luth Tonti, La Salle, and others, whose names are made familiar to us in the chronicles of earlier explorations.

From their Indian friends, the pioneers of New France learned of the great western river flowing southward, now known as the Mississippi. Marquette and Joliet made their way to this river through the wilds of what is now Wisconsin, and descended as far as the mouth of the Arkansas (1673). They were followed by La Salle, who with his faithful companion, Tonti, explored the Mississippi to its mouth, taking possession of the whole territory watered by it and its tributaries in the name of Louis XIV King of France (April 9, 1682). Here is where the name Louisiana first appears upon the map, and a claim to a part of the shore of the Gulf of Mexico is set up counter to the claims of Spain.

La Salle, setting out from France, made an ineffectual attempt to reach the mouth of the Mississippi, for the purpose of planting a colony upon its banks. Tonti descended from Canada, to co-operate with his chief; and, failing to meet La Salle, established Arkansas Post (1686), the oldest settlement in the lower Mississippi Valley.

France's further plans of colonization were held in abeyance during the war of the English Succession.<sup>1</sup> But no sooner had the war ended (1697) than they were put into execution. Here comes upon the scene Pierre Lemoyne, Sieur d'Iberville. The period of American beginnings has no more heroic a figure. Iberville was a Canadian by birth,

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<sup>1</sup> In America known as King William's War.

one of eleven brothers, all of whom attained distinction in the service of king and country. As a naval officer of France in the war just closed, he had taught the English several lessons in the art of naval warfare, and had given them some forcible reminders that their boasted superiority on sea was not as yet clearly established.<sup>1</sup>

Iberville sailed from Brest (1698) with a company of colonists. Entering the Gulf of Mexico, he directed the course of his vessels to the magnificent harbor of Pensacola, of which he had learned. But behold, he finds himself forestalled by the Spaniards, who, anticipating the coming of the French and determined to hold by occupancy what was Spain's by right of discovery and exploration, had only a month previous established themselves at Pensacola.

It was only by the subterfuge of concealing the real object of his expedition that Iberville was permitted to proceed without protest on the part of the Spaniards.<sup>2</sup> Proceeding westward, he touched at Mobile bay, explored the islands which skirt Mississippi sound, and finally effected a landing near what is now the town of Ocean Springs, Miss. (1699). The settlement was called Biloxi, after a neighboring tribe of Indians. Here the first seat of government of lower Louisiana was established, and the *Sieur Sauvolle* was appointed the first governor.

The Spaniards, in their establishment of missions, were making their way up from Mexico. Already the English influence was reaching from the Atlantic seaboard and affecting the Chickasaws and other Indian tribes within the limits of the French claim.

To combat the one and counteract the other, a post was established on Red River, near the present town of Natchitoches, La. (1714), and another, Fort Rosalie, near the present town of Natchez, Miss. (1716). Finally, realizing that lower Louisiana could never be firmly held and the full

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<sup>1</sup> See Gayarré : *Hist. of La.*, Vol. I, chap. 2.

<sup>2</sup> King and Ficklin's *Hist. of La.*, page 30.

control of the Mississippi be assured unless the center of French colonization was moved to the banks of that stream, New Orleans was founded (1718), and shortly after made the seat of government.

With the founding of New Orleans, the French settlements along the gulf, or West Florida coast, pass historically into obscurity. After sixty-four years of French occupation, West Florida at the time of the treaty of 1763 contained less than five hundred people, including slaves.<sup>1</sup> In subsequent years it was left to a historian<sup>2</sup> to recall the fact that there ever was a time that Louisiana, "as France possessed it," extended along the shores of the Gulf of Mexico as far as Mobile.

### III.—THE FIRST WEST FLORIDA (BRITISH).

When the "Old French War" drew to a close, and the contest for supremacy in America was decided in favor of the English, France was compelled to relinquish all her territorial possessions on the continent of America. To Spain, who had been her suffering ally in this war,<sup>3</sup> she gave the island of New Orleans<sup>4</sup> and that part of Louisiana lying west of the Mississippi. To England she ceded that part of Louisiana lying east of the Mississippi. England also received Florida of Spain, making the English possessions in what is now the territory of the United States, extend from the Atlantic, on the east, to the Mississippi, on the west; and from the great lakes, on the north, to Lakes Maurepas, Pontchartrain, and Borgne, and the Gulf of Mexico, on the south.

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<sup>1</sup> Lowry and McCardle : *Hist. of Miss.*, p. 47.

<sup>2</sup> Marbois.

<sup>3</sup> Duruy : *Hist. of France*, p. 501.

<sup>4</sup> The island of New Orleans lay upon the east bank of the Mississippi, and extended from the mouth of that river up as far as Bayou Manchac, or Iberville river, a stream a little distance south of Baton Rouge, connecting the Mississippi with Lake Maurepas. The Bayou no longer exists, having been filled up.



Spain manifested some reluctance in extending her jurisdiction over the ceded province. The treaty was concluded in 1763, and not until 1766 did she show any intent to take formal possession.<sup>1</sup> Indeed, it was not until 1769 that the transfer from France to Spain was formally declared and consummated.

On the other hand, England acted very promptly in occupying her part of the cession. The treaty of cession was concluded Feb. 10, 1763, and before the year was out, by proclamation of King George III, Florida was divided, the boundaries of the eastern and western portion established, and Captain George Johnstone, a distinguished naval officer, installed as first governor of the British Royal Province of West Florida.

The claims of Georgia extending westward to the Mississippi, it was at first intended that the northern boundary of West Florida should be fixed at the 31st parallel of latitude, but the difficulty of communication between the east and west in the latitude of Georgia, and the necessity of having a seat of government convenient to the people, who were already entering and taking up their residence in the fertile lands about the Yazoo and other streams, caused the northern limit of West Florida to be extended northward to the line of  $32^{\circ} 28'$  (1767), which extension was embodied in the commission of John Elliot, who succeeded Johnstone as governor.<sup>2</sup>

The eastern boundary of British West Florida was the Chattahoochee and Appalachian rivers; the western, the Mississippi. On the south were the Gulf of Mexico, Mississippi sound, Lakes Borgne, Pontchartrain, and Maurepas; and Bayou Manchac separating West Florida from the

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<sup>1</sup> In 1766, Don Antonio de Ulloa was sent to govern Louisiana, but, although he remained in the colony two years or more, he exhibited no credentials and failed to assume any of the duties of his office. In 1769, Don Alexander O'Reilly arrived and took formal possession for Spain.

<sup>2</sup> Lowry and McCardle : *Hist. of Miss.*, p. 48.

Isle of Orleans to the southward. The seat of government was established at Pensacola. Fort Condé, near Mobile Bay, was changed to Fort Charlotte; Fort Rosalie (Natchez), to Fort Panmure. A new fort was established and garrisoned at the junction of Bayou Manchac and the Mississippi river, and was called Fort Bute. Bute and Panmure were two administration notables during the reign of George III. the king of England at that time.

A wonderful impetus was given to the West Florida colony when power was bestowed upon Governor Johnstone to make free grants of land to every retired officer and soldier who had served England in the French and Indian war. A field officer was entitled to 5000 acres, a captain to 3000, and so on down to a private, whose portion was 100 acres.

In the twenty years that West Florida was a British possession French influences and trends of development were rooted out and the province was made thoroughly English in character. The three English governors of British West Florida were Johnstone and Elliot, already mentioned, and Peter Chester. Johnstone was appointed in 1763; Elliot in 1766, and Peter Chester in 1770.<sup>1</sup> It was during Chester's incumbency that some of the most remarkable events connected with West Florida history took place.

#### IV.—THE SECOND WEST FLORIDA (SPANISH).

The attitude of Spanish Louisiana toward British West Florida was one of jealousy and mistrust. The British were discouraged in every way from opening commercial relations with their Louisiana neighbors. Nevertheless, an ex-

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<sup>1</sup>Lowry and McCardle's *History of Mississippi* gives the dates as 1763, 1767 and 1771. Beatson's *Political Index to the Histories of Great Britain and Ireland*; or, a *Complete Register of the Hereditary Honours, Public Officers and Persons in Office, from the Earliest Periods to the Present Time*, published in London, in 1788, from which have been taken the above, may be considered authoritative.

tensive, though surreptitious,<sup>1</sup> trade was developed that augured great prosperity to West Florida. As the war of the American Revolution approached, the same instinct which impelled emigration across the Alleghanies to Tennessee, Kentucky and Ohio, caused West Florida to receive its share of English-speaking pioneers. The American element of population thus introduced was decidedly a Tory element, but not one given to aggressiveness, being content to occupy a position of neutrality in the contest between England and her American colonies. West Florida was so far away from the scene of action, that she well may have remained undisturbed but for the fact of Spanish antagonism against things British. Between the revolting American colonies and England the Spanish authorities manifested a decided leaning toward the former.

This favoring of the American colonies against the English first took the form of permitting Oliver Pollock, the secret agent of the Continental Congress, to gather stores and munitions of war at New Orleans, and forward them by river to Fort Pitt (Pittsburg). Indeed, the idea of an American expedition down the Ohio and Mississippi for the purpose of attacking the British of West Florida was a subject of correspondence between Captain George Morgan, in command at Pittsburg, and Governor Galvez of Louisiana.

When Pollock descended the Mississippi to establish himself in New Orleans, there came with him an adventurer of brutal instincts but gentlemanly appearance, in the person of James Willing.

"Willing," says Martin,<sup>2</sup> "visited the British settlements on the Mississippi, and some of his companions crossed the lakes to Mobile, with a view to induce the inhabitants to raise the striped banner, and join their countrymen in the struggle for freedom. The people of both the Floridas re-

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<sup>1</sup> See Gayarré : *History of Louisiana*, Vol. 3, p. 45.

<sup>2</sup> *History of Louisiana*, p. 223.

mained steadfast in their attachment to the royal cause. The thin and sparse population of the Floridas, their distance from the provinces engaged in the war, and the consequent difficulty of receiving assistance from them, had also its influence on the conduct of the inhabitants."

Willing was hospitably entertained at Baton Rouge, Natchez, and other points visited. No one suspected that a plot against the well-being of his entertainers was shaping itself in his mind. He returned to Pennsylvania, and upon his representation that the neutrality of West Florida was highly important to the American cause, as removing an enemy from the rear and permitting the free passage of munitions of war, he received from Congress, then sitting at Lancaster, Pa., authority to move in the matter of securing this neutrality.

Returning to Natchez with an armed retinue, he found it no difficult matter to prevail upon many to take an oath of neutrality. Upon one pretext or another, Willing now entered upon a career of confiscation, robbery and cruelty. The very homes in which he had been a favored guest suffered most.<sup>1</sup> Many unfortunates, bereft of their all, were compelled to take refuge across the river among the unfriendly, but less cruel, Louisianians. But for this cruel, wanton, unprovoked, conduct toward a helpless community, West Florida might have been won over to the American cause, the royal governor at Pensacola being too far distant to interpose any active opposition either against Willing's raids or against any action the West Floridians near the Mississippi might have taken toward co-operating with the thirteen other colonies of Great Britain. So West Florida was overrun and ravaged in the war of the American Revolution, as were the Atlantic seaboard colonies; and if the Carolinas had a bloody Tarleton to ignore the usages of civilized warfare, West Florida had a brute Willing, to

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<sup>1</sup>A Memento of Willing's Raid, *New Orleans Times-Democrat*, Feb. 25, 1894.

garb himself in a cloak of patriotism as a studied excuse for license and crime.

In 1777, France espoused the cause of the American colonies, and formed an alliance with them against England. Perceiving a possibility of winning back the much coveted fortress of Gibraltar, Spain shortly after allied herself with France, and was soon actively engaged in hostilities against England (1779).

The Spanish province of Louisiana had for its governor at the time Spain declared war, Don Bernard de Galvez, who, but a youth in years, left a deep impression upon his times and surroundings by his intrepidity and genius. When news reached Louisiana of Spain's declaration of war, Galvez promptly took upon himself the task of conquering West Florida.<sup>1</sup> With a force of 1400 men, he marched northward from New Orleans, and, arriving at Bayou Manchac, stormed and captured Fort Bute. Advancing upon Baton Rouge, he invested the place, and, after a hot engagement lasting two hours, compelled Colonel Dickinson with 500 men to surrender. His next undertaking was against Mobile, which surrendered March 14, 1780.

It is needless to say that the achievements of Galvez were viewed with great satisfaction in both America and Spain. General Washington sent a letter of congratulation from his winter quarters at Morristown, N. J.<sup>2</sup> Every encouragement was now extended to Galvez to continue his operations. Ships and men were furnished him, and from Havana he set out for Pensacola to attack the British capital and stronghold. At Pensacola he was joined by Miro, from New Orleans, and Espelleta, from Mobile. The personal bravery of the young commander was an important factor in all his military successes, and never was this better veri-

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<sup>1</sup> An original print of the royal proclamation authorizing the Spanish colonists to proceed against their English neighbors is in the possession of Mr. H. L. Favrot, of the New Orleans bar.

<sup>2</sup> Washington to Don Juan Miralles, Feb. 27, 1780.



fied than in his attack upon Pensacola. The fort was taken, and with its fall the Floridas, West and East, by right of conquest, which right was afterward confirmed by the treaty of 1783, became Spanish territory again,<sup>1</sup> and once more by occupancy and possession did she hold what had once been hers by discovery and exploration.

Many honors were bestowed upon Galvez. He was commissioned a Lieutenant-General, decorated with the cross of Knight Pensioner, and made a Count. He was appointed, successively, Governor of Louisiana; Captain-General of Louisiana and Florida; Governor-General of Cuba, the Floridas and Louisiana; and Viceroy of Mexico. With a record achieved by few of his years, he died at the comparatively early age of thirty-eight. His several commissions define sharply the distinction existing in the Spanish mind between Louisiana and the Floridas. According to Spanish conception, West Florida was not Louisiana, but a separate province, conquered by force of arms, an integral unit among the units which collectively constituted Spain's colonial possessions in the Western World.

#### V.—THE THIRD WEST FLORIDA (INDEPENDENT STATE).

The establishment of the Federal Government followed the successful termination of the American Revolution. The relations between the newly organized government and the Spanish authorities of Louisiana were by no means harmonious. The boundary line between the Floridas and the United States was in dispute.<sup>2</sup> Spanish intrigue was

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<sup>1</sup> Lecky: *History of England in the Eighteenth Century*, p. 171.

<sup>2</sup> Spain claimed the 32° 28' line, proclaimed by Great Britain in 1767, as the northern boundary of West Florida. The United States insisted upon parallel 31°, the boundary as originally fixed before the Natchez district was annexed. The treaty of Madrid, Oct. 27, 1795, confirmed the latter. (See Winsor's *Nar. and Crit. Hist.*, Vol. 7, p. 543.)

fomenting among the settlers of the Ohio Valley a spirit of discontent against the government of the United States. The Spanish authorities of Louisiana had in view the annexation of the territory in which this discontent was manifesting itself.

The produce of the western settlers in those days, when the bars of the Alleghanies had not yet been removed by locomotive and canal boat, could only reach a profitable market by way of the Mississippi. While the mouth of this river was under Spanish control, western American commerce depended in large part upon the complacency of the Spanish governor at New Orleans. Sometimes river navigation was prohibited to the Americans; at other times it was grudgingly conceded, and that in a manner thoroughly unsatisfactory to those whose material prosperity depended upon this free use of nature's route to the sea.

Thus it was that the United States, in conformity with its leading purpose "to promote the general welfare," found it incumbent upon itself to secure a commercial depot near the mouth of the river. Either the island of New Orleans or West Florida would answer the purpose. Moreover, a number of other rivers rising in the territory of the United States make their way through Florida to the Gulf of Mexico. With the necessity of having a depot site near the mouth of the Mississippi came also the realization that control of the mouths of these other rivers would be of great future importance to the United States. The idea of acquiring the Floridas rapidly took shape. Indeed, the value of the Floridas to the United States was regarded as infinitely greater than trans-Mississippi Louisiana. The island of New Orleans, however, out-valued the Floridas; and the instructions which went to Europe, specified that New Orleans and West Florida, in particular, were to be negotiated for.<sup>1</sup>

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<sup>1</sup> In letter of March 2, 1803, to Monroe and Livingston, Secretary of State Madison stipulated that the Floridas together were to be estimated at one-fourth the value of New Orleans; and, East Florida at one-half of the value of West Florida.

Meanwhile, Napoleon Bonaparte had come to be the most conspicuous figure in Europe; and one of the moves made by him upon the chess board of European politics was to compel Spain to cede Louisiana back to France. The cession was made by secret treaty,<sup>1</sup> for Napoleon was not then in position to hold by force of arms the re-acquired province against the enemies of France, who were all too ready to invade distant French possessions.

However polite and wordily affectionate was the language of diplomacy employed by the two governments upon the occasion of the treaty, historians recognize the fact that the transaction was purely and simply a case of "stand and deliver" on one side, and reluctant yielding on the other. True, two concessions were made the reluctant party—one expressed in the treaty and the other understood.<sup>2</sup> One was that the Duke of Parma would be raised to a position among the crowned heads of Europe, by Napoleon's power and influence. The other was that France would never part with Spain's extorted gift unless it be to return it to the donor. Neither of these pledges did Napoleon fulfill; and as that one in regard to the Duke of Parma was a stipulated consideration in return for Louisiana, non-fulfilment of the contract on the part of one, according to the moral, as well as the common, law, cancelled the obligation of the other. When the United States purchased Louisiana, it acquired a vitiated title, which, if Spain had been at the zenith of her power, would never have been made good.

Numerous surmises have been advanced regarding Napoleon's motives in acquiring Louisiana. It is reasonable to suppose that he had in view the rehabilitating of French prestige in America. With the St. Ildefonso treaty as precedent, the cession of Mexico and the Floridas could easily

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<sup>1</sup> Treaty of Ildefonso, Oct. 27, 1800.

<sup>2</sup> June 19, 1802, Talleyrand pledges by letter to Spain that France will never alienate Louisiana. (See Henry Adams: *Hist. of the U. S. during Jefferson's Administration*, Vol. 1, p. 400.)

be brought about if once the sea of European politics would settle down into tranquility and the French ship of State be brought to anchor in smooth waters.

But war clouds again lowered, and the loss of Louisiana was threatened. Livingston and Monroe, who were to purchase a modest depot site, found the whole province of Louisiana offered them. Acceptance of the offer and consummation of the transfer of the Province of Louisiana to the United States will be found treated of elsewhere. Suffice it to say, that on Nov. 30, 1803, Commissioner Laussat, on the part of France, received the territory, secretly ceded three years previously, from the Spanish Commissioner Casa Calvo, and twenty days after (Dec. 20, 1803), Governor Claiborne, of the Mississippi Territory, and General James Wilkinson, on the part of the United States, received the territory from Laussat, the ceremonies of transfer taking place in the city of New Orleans.

Thus were the Spanish possessions about the northern shores of the Gulf of Mexico again split into two parts by the Louisiana wedge. On one side was Mexico; on the other side were the Floridas. It was left to years of diplomacy to determine exactly what the boundaries should be between the American purchase and the Spanish possessions, and it was not until 1819 that an amicable adjustment was reached.

The year 1803, which saw Louisiana and the island of New Orleans transferred to the United States, saw also Governor Folch, with headquarters at Pensacola, exercising jurisdiction over all Florida. De Grandpré was the military commander of the District of Baton Rouge, remaining as such until 1807 or 1808, when he was succeeded by Don Carlos Dehault de Lassus.

It had been a great disappointment to the English-speaking population of West Florida, that the region inhabited by them had not been included in the transfer of Louisiana to the United States. To the north of them was the Mississippi Territory, organized in 1798, in which a

less restraining, yet more stable, form of government stood in contrast to that under which they were governed. The rich lands about Baton Rouge, had induced many from the Mississippi Territory to cross, with some hesitation, however, the line of demarkation, and take up their abode under a jurisdiction distasteful to them. Antagonism between the more favored Spanish subjects and the less favored English-speaking immigrants was the inevitable result. Complications in regard to smuggling and runaway slaves arose, as they did at the other, or Georgia, end of the Florida boundary line. The policy of De Lassus was vacillating; his character, weak. Innumerable causes of dissatisfaction were afforded every day by corrupt officials and lax methods of suppressing crime. Spain, being so far away and engrossed with her own affairs at that particular time, it was beyond question to refer grievances to other than prejudiced local tribunals. In the midst of this general unrest and discontent, intimation came that Bonaparte claimed West Florida, and would soon take possession.

The West Floridians preferred the jurisdiction of the United States. They were tolerant of and submissive to Spanish rule when based upon any semblance of right and upon some consideration of their interests; but the idea of being dominated by France inspired them with such distaste that they were aroused to action.

A convention was proposed by citizens of Feliciana, and the proposition was generally responded to by the other citizens of the Districts. Delegates were elected, and the convention met in open air at Buhler's Plains, July 17, 1810. John Mills presided, and Dr. Steele acted as secretary. A general desire to appeal for annexation to the United States seemed at first to animate this convention. But unswerving allegiance to Spain, as against any effort of France to take possession, was set forth by formal resolutions.<sup>1</sup>

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<sup>1</sup> "We, therefore, the people of West Florida, exercising the rights which incontestably devolve upon us, declare that we owe no allegi-



Committees waited upon Governor De Lassus, to convey to him the result of the deliberations of this convention, and to present to him memorials relative to the reorganization of the West Florida government. This reorganization was in no way to jeopardize the sovereignty of Ferdinand VII over the province, and to De Lassus himself was pledged the new governorship proposed.<sup>1</sup>

De Lassus apparently acquiesced in the proposed reforms, and another convention assembled, August 22, and continued in session to August 25. John Rhea presided. The sub-districts, or precincts, represented were New Feliciana, St. Helena, Baton Rouge, and St. Ferdinand. The organization of the new government was effected. De Lassus was elected Governor; judges and "civil commanders" were appointed; Philemon Thomas was made colonel, commanding all militia of the district. The convention seems to have acted in a constitutional and sovereign capacity. The proclamation announcing the organization of the new government was made August 22, addressed to the inhabitants of the jurisdiction of Baton Rouge, and signed by De Lassus, "Colonel of the Royal Armies, and

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ance to the present ruler of the French nation, or to any king, prince or sovereign, who may be placed by him on the throne of Spain, and we will always, and by all means in our power, resist any tyrannical usurpation over us of whatever kind, or by whomsoever the same may be attempted, and in order to more effectually preserve the domestic tranquillity and secure for ourselves the blessings of peace and the impartial administration of justice, we propose the following." Then comes a series of thirteen articles, which might be termed a projected constitution. (Publication of the Louisiana Historical Association, Vol. I, part II, p. 42.)

<sup>1</sup> "They wanted peace and the proper administration of justice. . . . Their address closes by forcibly reminding his Excellency of the necessity for a strong militia, well organized, well equipped, and well officered, to insure for the country complete exemption from anarchy and turmoil, and to lend force and dignity to their laws." H. L. Favrot: "Some Account of the Causes that Brought About the West Florida Revolution" (compiled from MS. sources and published in Part II of the Louisiana Historical Society Publication).

Governor, Civil and Military of the Place, and Jurisdiction of Baton Rouge," and "the representatives of the people of said jurisdiction in convention assembled."<sup>1</sup>

Before a month elapsed it was found that the acquiescence of De Lassus was a pretended one, and that his real purpose was treachery. Correspondence, intercepted by Colonel Thomas, revealed the fact that De Lassus was pressing upon Folch at Pensacola the necessity of sending to Baton Rouge a large force to quell an insurrection "of his Catholic Majesty's subjects" then in progress. He urged that Folch march to the scene in person and that he summon assistance from Cuba, as the insurgents were "desperate and determined."

Upon discovery of the Governor's treacherous plans, Colonel Thomas immediately consulted with the leaders of the recent movement. It was decided to raise the banner

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<sup>1</sup> "To the Inhabitants of the Jurisdiction of Baton Rouge :

"His Excellency, Carlos Dehault DeLassus, Colonel of the Royal Armies and Governor Civil and Military of the Place and Jurisdiction of Baton Rouge, with the representatives of the people of the said jurisdiction, in convention assembled, announce :

"That the measures proposed to be adopted for the public safety and for the better administration of justice within the said jurisdiction, are sanctioned and established as ordinances, to have the force and authority of law, within the several districts of this jurisdiction, until the same be submitted to the Captain-General of the island of Cuba, and until his *decision thereon* shall be known. The said ordinances will be made known in each district with all possible dispatch, and in the meantime all the good people of this jurisdiction are required to preserve good order and avoid every movement which may disturb the public tranquillity—it being the only object of both the Governor and the representatives to consult the best interests of the inhabitants. And although it is not intended to mark with severity the authors of the disorder which has appeared in several parts of the country for some time past, yet all such persons as may be found offending in that manner, after this date, will be punished with the severity which the law prescribes and which their offences may deserve.

"BATON ROUGE, August 22, 1810."

(Louisiana Historical Society Papers, part 11, pp. 44-45.)

of open revolt and declare West Florida a free and independent State. A convention was held. Independence was declared (Sept. 26, 1810),<sup>1</sup> and a new government under Fulwar Skipwith, as governor, was instituted.

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<sup>1</sup> "By the Representatives of the people of West Florida, in convention assembled :

"A DECLARATION.

"It is known to the world with how much fidelity the good people of this Territory have professed and maintained allegiance to their legitimate sovereign, while any hope remained of receiving from him protection for their property and their lives.

"Without making any unnecessary innovation in the established principles of the government, we had voluntarily adopted certain regulations, in concert with our First Magistrate, for the express purpose of preserving this Territory, and showing our attachment to the government which had heretofore protected us. This compact which was entered into with good faith on our part, will forever remain an honorable testimony of our upright intentions and inviolable fidelity to our king and parent country, while so much as a shadow of legitimate authority remained to be exercised over us. We sought only a speedy remedy for such evils as seemed to endanger our existence and prosperity, and were encouraged by our Governor with solemn promises of assistance and co-operation. But those measures, which were intended for our preservation, he has endeavored to pervert into an engine of destruction, by encouraging in the most perfidious manner, the violation of ordinances sanctioned and established by himself as the law of the land.

"Being thus left without any hope of protection from the mother country, betrayed by the magistrate whose duty it was to have provided for the safety and tranquillity of the people and government committed to his charge, and exposed to all the evils of a state of anarchy, which we have so long endeavored to avert, it becomes our duty to provide for our own security, as a free and independent state, absolved from all allegiance to a government which no longer protects us.

"We, therefore, the representatives aforesaid, appealing to the Supreme Ruler of the world for the rectitude of our intentions, do solemnly publish and declare the several districts composing this Territory of West Florida to be a *free and independent State*; and that they have a right to institute for themselves such form of government as they may think conducive to their safety and happiness; to form treaties; to establish commerce; to provide for their com-

Meanwhile Thomas and the militia were engaged in taking forcible possession of Spanish military defenses. According to some accounts, De Lassus had absented himself from his post and left in command young Louis de Grandpré, grandson of Carlos de Grandpré, former governor, but in reality he was within the fort, tradition says, in hiding, and it was because of his cowardice that his young lieutenant assumed charge of the defenses.

Grandpré was besieged in Baton Rouge, and after a gallant and stubborn resistance, in which he lost his life, the post surrendered to the forces of the convention.

Thus was the birth of a new American State proclaimed, and thus did a people wrest from a potentate their liberty and independence. In order to better continue in the enjoyment of these acquired privileges, application was made for admission into the Union. A copy of the "declaration" was forwarded to the President of the United States, through Governor Holmes of the Mississippi Territory,

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mon defence ; and to do all acts which may, of right, be done by a sovereign and independent nation ; at the same time declaring all acts, within the said Territory of West Florida, after this date, by any tribunals or authorities not deriving their powers from the people, agreeably to the provisions established by this Convention, to be null and void ; and calling upon all foreign nations to respect this declaration, acknowledging our independence, and giving us such aid as may be consistent with the laws and usages of nations." (Gayarré : *Hist. of La.*, Vol. 2, pp. 231-233.)

Gayarré finds it strange that in this document of the revolvers, allusion is made to the "fidelity with which they had professed and maintained allegiance to their legitimate sovereign," and to their solicitude to proclaim that "they had not taken arms against the king." (*Hist. of La.*, Vol. 4, p. 231.) He seems not to have had access to data concerning the previous uprising of the West Floridians, in which they declared their continued allegiance to the king, and had in view only the bettering of the government and stricter administration of justice, while continuing the Spanish governor, DeLassus, in office. This is what the declarers meant in alluding to their past loyalty—that their former movement had not been insurrectionary. With their present movement they did not couple their expressions of loyalty.



and Rhea, writing under date of October 10, opened communication with the Secretary of State at Washington, with a view to either admission or annexation. Inasmuch as the inhabitants had risked both blood and treasure in the acquirement of the territory, it was sought to reserve the public lands to their exclusive benefit.<sup>1</sup> October 27, President Madison issued his proclamation declaring West Florida under the jurisdiction of the United States. Governor Claiborne of Orleans Territory was ordered to take possession, and, repairing to Natchez, he organized a small force of mounted militia, entered West Florida, and at St. Francisville, one of the principal towns of the Territory, raised the flag of the United States. No opposition was encountered.

The beginning of the "Free and Independent State of West Florida" dates with the assembling of the convention, September 23, 1810; and its career terminates with the raising of the flag of the United States at St. Francisville, December 6, of the same year. Yet brief as was this career, it was nevertheless active. When the Spanish authorities of Baton Rouge were deposed, it was anticipated that Governor Folch would attempt to interfere with the organization of the little republic. So the convention posted a line of sentinels along the banks of the Pearl river, the eastern boundary of the part of West Florida in revolt. The maintenance of this line was found to be an uncertain and expensive means of safety against attack. It was determined to settle the matter at once by a resort to arms. War was declared against Mobile. An expedition under the command of Colonel Reuben Kemper<sup>2</sup> made its way to the

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<sup>1</sup> The claim of the West Floridians to their public domain was rejected upon the theory that West Florida already belonged to the United States as a part of the Louisiana Territory purchase.

<sup>2</sup> Kemper was one of three gigantic brothers, living in the neighboring Mississippi Territory, all of whom had previously incurred the displeasure of the Spanish authorities. One of them had been imprisoned, since which time the Spaniards had no foe more relentless than the Kempers.



shores of Mobile bay; but, being poorly equipped, was compelled to defer its attack until a supply of arms and munitions could be procured. An agent of Kemper managed to purchase of Henri de la Francia, a citizen of Baton Rouge, a lot of arms,<sup>1</sup> and the convention brought a flat-boat load of Western produce, transferred it to a keel-boat, and sent it to the relief of Kemper.

Governor Folch was completely demoralized at the display of force made by Kemper; he wrote, December 3, to President Madison, imploring the Government of the United States to send the garrison of Fort Stoddard to help him "drive Reuben Kemper back to Baton Rouge," and to send commissioners with power to treat for the transfer of Mobile and the rest of the province of West Florida to the United States. Three days later, Claiborne reached St. Francisville. Kemper and his men, being without governmental authority to sustain them in their undertaking, made their way back.

The annexation of West Florida called forth protests from Spain and Great Britain.<sup>2</sup> Indeed, such was the attitude of the latter that Congress passed secret acts authorizing the President to take temporary possession of East Florida (Jan. 15 and Mar. 3, 1811) should England, persisting in the idea that there was a territorial grab game going on without her participation, endeavor to seize East Florida.<sup>3</sup>

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<sup>1</sup> It is interesting to note that these same arms formed a part of the much-needed equipment which General Jackson, five years later, with difficulty collected for the defence of New Orleans against the British.

<sup>2</sup> "I deem it incumbent upon me," said Mr. Morier, Great Britain's representative at Washington, to the Secretary of the State, on the 15th of December, "considering the strict and close alliance which subsists between His Majesty's Government and that of Spain, to express to the Government of the United States, through you, the deep regret with which I have seen that part of the President's message to Congress, in which the determination of this government to take possession of West Florida is avowed." (Gayarré: *Hist. of La.*, Vol. 4, p. 241.)

<sup>3</sup> See Winsor: *Nar. and Crit. Hist. of America*, Vol. 7, p. 546.

Indeed, in 1814, General Jackson, commanding the military defenses of the South in the war of 1812, was under the necessity of invading the Spanish province to drive British forces from Pensacola.

January 22, 1812, by act of Congress, Louisiana was admitted to the American Union as a State. April 14 following, an act adding that part of West Florida lying between the Pearl and Mississippi rivers to Louisiana as constituted, was approved by the President. Thus, after many cruises in various jurisdictional seas, the West Florida ship of State finally came to permanent anchorage in undisturbed waters, its memory still preserved in every allusion to the "Florida Parishes" of Louisiana.



PART II.

The Madison-Livingston Theory of West  
Florida Acquirement.





## PART II.

### THE MADISON-LIVINGSTON THEORY OF WEST FLORIDA ACQUIREMENT.

#### I.—MR. MADISON'S ACCEPTANCE OF MR. LIVINGSTON'S VIEW.

In the beginning of this paper reference was made to the fact that a number of historical works give the limits of the Louisiana purchase as extending eastward to the Perdido river. The first intimation of this extension came from Mr. Livingston, Minister to France, who in a letter to Secretary of State Madison, of date May 20, 1803, exactly twenty days after the treaty was signed which ceded Louisiana to the United States, alludes to a conversation held with Marbois,<sup>1</sup> in which the latter stated as an historic fact that Mobile was once a part of French Louisiana. Mr. Livingston then analyzes the clause in the treaty of Ildefonso, which specifies that the Louisiana therein ceded to France was of "the same extent it now has in the hands of Spain, and which it had when France possessed it," and deduces therefrom an acquired right of the United States to the greater part of the territory of West Florida as included in the Louisiana purchase. He advises strongly that Madison adopt this view and insist upon the boundaries thus extended. Madison did so, and this view became an established opinion which actuated him after he had become President of the United States. Either this view was wrongly taken, or such careful investigators as McMaster, Hart, and others are in error.

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<sup>1</sup> French Minister of Foreign Affairs and author of an excellent history of Louisiana.

It should be remembered that the desire of the United States at no time, either by popular discussion or Presidential letter of instructions, extended to the possession of territory west of the Mississippi river. This river was looked upon as a natural boundary. The acquirement of the Floridas and the island of New Orleans would extend this boundary along the whole length of the river to the Gulf, which was an object greatly to be desired by the young republic.

Livingston was authorized to negotiate for the cession, by treaty or sale, to the United States of the island of New Orleans and the Floridas, if not East Florida at least West Florida. Even after the purchase of Louisiana was concluded, Monroe was instructed by Madison to continue and press the negotiations for the acquirement of the Floridas. The importance of these to the United States is indicated by the persistent diplomacy, covering a period of more than sixteen years, which the Federal Government employed in holding to the idea that Florida must be ours.

A negotiation which aimed at the acquirement of Florida and resulted in the acquirement of the west bank of the Mississippi, was a partial administrative failure. Little or nothing was known of the West in those days; the frontier civilization had but a short time previous been moved beyond the Alleghanies. What was wanted, was not land beyond the river, but removal of the barriers which barred egress to the Gulf.

Jefferson, President when Louisiana was purchased, was borne into office by the popularity of the principles he represented. The continuance of his party in power depended, in those days of unstocked conventions and free expression of the people's will, upon the success of the administration in executing the will and desires of the people.

Secretary of State Madison was, therefore, more than willing to grasp at the straw of West Florida acquirement held out by Livingston.

## II.—THE BASIS OF MR. LIVINGSTON'S CLAIM.

An examination of the correspondence which passed between Livingston, while Minister to France, and Secretary of State Madison betrays unmistakably the motive which actuated Livingston in claiming West Florida to the Perdido as included in the Louisiana purchase.

Taking up the correspondence at that point where Livingston is not yet fully sure of the fact that Spain had secretly ceded Louisiana to France,<sup>1</sup> we find him ascribing as a reason why the French Minister will give him no information, the fact that a difference exists between France and Spain in regard to the limits of the ceded province<sup>2</sup>—whether they included the Floridas or not, France so claiming, and Spain denying. He further adds in the same letter: "The French government had probably no doubt until we started it." This is a remarkable admission. The United States wants to know who owns West Florida. The mere asking suggests to France doubtful ownership. A claim-all spirit manifests itself. The letter also shows Spain consistently maintaining her claim to Florida. This, coming between the Louisiana retrocession and purchase is significant.

The correspondence then indicates some uncertainty in Livingston's mind as to whom he should apply in order to execute his commission of buying West Florida. May 28, he presumes to Spanish Ambassador d'Azara, "the Floridas are not included" in the St. Ildefonso cession. September 1,<sup>3</sup> he has "every reason to believe the Floridas are not included." November 2, he writes:<sup>4</sup> "Florida is not, as I before told you, included in the cession." November 11, we find him writing:<sup>5</sup> "In my letter to the Presi-

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<sup>1</sup> Letter of December 10, 1801.

<sup>2</sup> Letter of May 28, 1802.

<sup>3</sup> Livingston to Madison, September 1, 1802.

<sup>4</sup> Livingston to Madison, November 2, 1802.

<sup>5</sup> Livingston to Madison, November 11, 1802.

dent, I informed him that General Bornouville had gone post-haste to Spain, and that I had reason to think he had it in charge to obtain the Floridas." November 14, he has "obtained accurate information" of the offer to be made by France for Florida.<sup>1</sup> December 20, he writes:<sup>2</sup> "France has not yet got Florida."

At the time Livingston is thus writing to his home government his positive statements in regard to France's non-acquirement of Florida, we find him "presuming the Floridas are in the hands of France" in a communication to the French Minister of Foreign Relations,<sup>3</sup> and then communicating to Madison: "The Floridas, not yet ceded."<sup>4</sup> "The essential fact for us is that the Floridas are not yet ceded."<sup>5</sup> "Florida is not yet ceded, nor, as I hope, likely to be so."<sup>6</sup>

In reading the letters of Livingston one gets an unpleasant sense of helplessness displayed upon the part of our diplomatic representative. For more than a year his messages to his home government tell the monotonous story of nothing definitely accomplished. The presidential election was near at hand, and there was nothing as yet to report to the American people. Thus it was that the halting forces of American diplomacy at Paris were re-enforced and James Monroe sent as Minister Plenipotentiary and Envoy Extraordinary to hasten a victory.

March 3, 1803, Livingston writes in reply to the notification of Monroe's appointment, just received, and wishes Monroe success, adding the familiar refrain "The Floridas are still in the hands of Spain." From the time Monroe reaches Paris, and becomes co-signer with Livingston of the letters to Madison, reporting progress, there is seen a radical change in the tone and spirit of these letters. Di-

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<sup>1</sup> Livingston to Madison, November 14, 1802.

<sup>2</sup> Livingston to Madison, December 20, 1802.

<sup>3</sup> Livingston to Minister Foreign Relations, January 10, 1803.

<sup>4</sup> Livingston to Madison, February 5, 1803.

<sup>5</sup> Livingston to Madison, February 18, 1803.

<sup>6</sup> Livingston to Madison, March 24, 1803.

rectness and "business" animate them. These qualities in Monroe, with the opportune time of his arrival, brought speedy results, for less than a month after his arrival, Louisiana, with its magnificent domain, passed by treaty of purchase to the possession of the United States (April 30, 1803.)

Monroe's appointment and the speedy conclusion of Louisiana cession after his arrival, was a source of chagrin to Livingston. He had written,<sup>1</sup> after receiving the notification of Monroe's appointment, and before Monroe's arrival in Paris, "With respect to the negotiation for Louisiana, I think nothing will be effected here." His personal feeling in the matter is manifest in his letters of March 18, 1803, and June 25, 1803. "I cannot but wish, sir," he writes in the first, "that my fellow citizens should not be led to believe from Mr. Monroe's appointment, that I had been neglectful of their interests." And in the last named he claims that his management and diplomacy had brought the French government to terms before Monroe's arrival.

As time passed on Livingston realized that a great event had taken place, and that there were indications that his name would go down in history as taking a secondary part therein. Note how he holds himself up to Secretary Madison:<sup>2</sup> "I this day got a sight of a letter from the minister, containing directions for giving up the country, and assigning the reason for the cession. I was much flattered to find their reasons drawn from the memoir I had presented." By November the idea that he principally had achieved the Louisiana purchase had so grown that we find him conceding as follows:<sup>3</sup> "There is no doubt Mr. Monroe's talents and address would have enabled him, had he been placed in my circumstances, to have effected what I have done. But he came too late to do more than assent to the

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<sup>1</sup> Livingston to President Jefferson, March 12, 1803.

<sup>2</sup> Livingston to Madison, July 30, 1803.

<sup>3</sup> Livingston to Madison, November 15, 1803.



proposition that was made us and to aid in reducing it to form." This letter also refers to some feeling on the part of Mr. Livingston's friends that Monroe should be mentioned in the papers at home as acting minister, and that he (Livingston) was not the principal agent in treating with France.

The foregoing gives us the key to Mr. Livingston's sudden change of conviction concerning West Florida when Minister Marbois intimated that Mobile was once a part of Colonial Louisiana. It had been and was the desire of the United States to acquire West Florida and the Island of Orleans. Monroe had assented to the purchase of Louisiana instead. If Livingston could formulate a reasonable theory upon which the United States could base a claim to West Florida the glory would be his and his alone. Perhaps his friends at home who were so solicitous in regard to his not being subordinated to Mr. Monroe, might even persuade a grateful people to confer upon him the highest honor within their gift, an honor afterwards conferred upon his colleague.

To substantiate this view it will be noted that Livingston, at a time when official communications to the Department of State at Washington, from the American mission in Paris, were being signed by both Monroe and himself, writes over his own signature, and evidently without consulting his colleague, his advice to claim West Florida and his argument therefor. This letter bears date of May 20, 1803, and it is not until June 7, that Monroe and Livingston are jointly and officially "happy to have it in our power to inform you that on a thorough examination of the subject, we consider it incontrovertible that West Florida is comprised in the cession of Louisiana."<sup>1</sup>

Here is Mr. Livingston's personal letter of May 20:

"I informed you long since that on inquiring whether the Floridas were within the cession of Spain, I was told

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<sup>1</sup> Monroe and Livingston to Madison, June 7, 1803.

by M. Marbois he was sure that Mobile was, but could not answer further. I believed the information incorrect because I understood that Louisiana as it then was, made the object of the cession, and that since the possession of the Floridas by Britain, they had changed their names. But the moment I saw the words of the treaty of Madrid I had no doubt but it included all the country that France possessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted with M. Marbois at the time we negotiated, that this would be considered as part of our purchase. He neither assented or denied, but said all they received from Spain was intended to be conveyed to us. That my construction was right is fairly to be inferred from the words of the treaties and from a comment upon them contained in the Spanish Minister's letter to Mr. Pinckney, in which he expressly says that France had received Louisiana as it formerly belonged to her saving the rights of other Powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now it is well known that Louisiana as possessed by France was bounded by the Perdido, and that Mobile was the metropolis. [?] For the facts relative to this I refer you to Raynal and to his maps. I have also seen maps here which put the matter out of doubt.

"I called upon M. Marbois for a further explanation on this subject and to remind him of his having told me that Mobile made a part of the cession. He told me he had no precise idea on the subject, but that he knew it to be a historical fact, and that on that only he had passed his opinion. I asked him what orders had been given to the Prefect who was to take possession, or what orders had been given by Spain as to boundary in ceding it. He assured me that he did not know, but that he would make inquiry and let me know. At four o'clock I called for Mr. Monroe to take him to the Minister of Foreign Affairs, but he was prevented from accompanying me. I asked the Minister what were the eastern boundaries of the territory ceded to us. He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said according to the words of the treaty. But what did you mean to take? I do not know. Then you mean we shall construe it in our own way? I can give you no directions; you have made a noble bar-

gain for yourselves and I suppose you will make the most of it.

"Now, sir, the sum of this business is, to recommend to you in the strongest terms, after having obtained the possession that the French commissary will give you, to insist upon this as a part of your right, and to take possession at all events to the river Perdido. I pledge myself that your right is good; and after the explanations that have been given here you need apprehend nothing from a decisive measure. Your Minister here and at Madrid can support your claim, and the time is peculiarly favorable to enable you to do it without the smallest risk at home. It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it and the war terminate favorably, she will not readily relinquish it. With this in your hand East Florida will be of little moment and may be yours whenever you please. At all events proclaim your right and take possession."

In view of the facts as previously reported by Mr. Livingston that Spain denied from the first having included West Florida in the St. Ildefonso cession; that France was wholly in ignorance of having acquired any claim to West Florida until Mr. Livingston's inquiries suggested that claim be made; and that France negotiated anew for the Floridas after the St. Ildefonso cession, thus showing France's St. Ildefonso claim to Florida being specious and untenable these facts render comment on the letter unnecessary, particularly as we have considered the treaty phase of the subject in another place.

Madison made the claim as directed, but the United States did not take possession of West Florida when Louisiana passed into her hands. But for the successful revolt of the West Floridians in 1810, and their application for admission or annexation, the title to West Florida would have been an open question until 1819. As it was, the treaty making cession of Florida to the United States specified East and West Florida.<sup>1</sup>

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<sup>1</sup> This claim certainly did not impress the mind of President Jefferson very forcibly, for we find him writing, in 1809, after his retire-

### III.—A RESUMÉ OF SUCCESSIVE JURISDICTIONAL RIGHTS TO THE TERRITORY OF WEST FLORIDA.

The successive changes in the jurisdictional right to West Florida may be summarized as follows:

1512 to 1699 Spain's by right of Discovery and Exploration.

1699 to 1763 France's by right of Occupancy.

1763 to 1783 England's by right of Treaty.

1783 to 1810 Spain's by right of Conquest.

1810 (Sept. 26) to 1810 (Oct. 27) Independent by Declaration and Revolt.

1810 (Oct. 27) to 1812 (April 14) United States Territory by Annexation.

1812 (April 14) to . . . Louisiana's by Act of Congress.

The original right of Spain to the Gulf coast by discovery and exploration cannot be gainsaid. But discovery only furnishes an inchoate title to possession in the discoverer.<sup>1</sup> Grotius, Puffendorf and Pothier all agree that to complete title, the right to the thing and the possession of the thing should be united. Spain united her right to Florida with her possession of Florida when she established permanent settlements at St. Augustine (1565) and at Pensacola (1699).

When France laid claim to the lower Mississippi Valley, her title was a questionable one. The region had already been discovered, explored and claimed. Her right could

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ment: "[Bonaparte] would give us the Floridas to withhold intercourse with the residue of those [the Spanish] colonies. But that is no price; because they are ours in the first moment of the first war; and until a war, they are of no particular necessity to us . . ." This is a virtual acknowledgment, by one preëminently qualified to know, that the acquirement of the Floridas was a matter for future consideration, and that neither one of the Floridas had come into possession of the United States by the Louisiana purchase. See John T. Morse, Jr.: Thomas Jefferson, p. 322. (*American Statesmen Series.*)

<sup>1</sup> Phillimore: *International Law*, Vol. I, p. 268.



have been set aside at any time, as it subsequently was by England in the Ohio Valley, had her national strength not been such as to preclude a weaker nation such as Spain from successfully resisting encroachment. Long years of undisturbed occupancy bettered France's claim.

When France, Spain, and Great Britain were made parties to the treaty 1763, which ceded Louisiana to Spain and Florida to Great Britain, valid title by possession of her part of the ceded territory was acquired by Great Britain at once (1763).

Spain failed to make good by occupancy her title until 1769, when O'Reilly took formal possession. For six years, therefore, the Louisiana as France possessed it, and as Spain received it, included no territory between the Mississippi and Perdido rivers.

In 1779-81 Spain acquired West Florida, as well as East Florida by right of conquest, confirmed by treaty of 1783. By no logical process of reasoning can it be shown that Spain's independent title to West Florida thus acquired should be included in Spain's previously acquired title to Louisiana and the island of New Orleans.

Unquestionably France's title to Louisiana reacquired by the secret treaty of St. Ildefonso was invalidated by her failure to return the promised consideration. Contracts between nations should be held as inviolable as contracts between individuals, and the fact that no tribunal exists to administer international justice and compel nations to act in conformity with moral law and international rights, is no reason why historians should side with might in error as against right in misfortune.<sup>1</sup>

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<sup>1</sup> It has sometimes been said that there can be no laws between nations, because they acknowledge no common superior authority, no international executive capable of enforcing the precepts of international law.

This confounds two distinct things, viz.: the physical sanction which law derives from being enforced by superior power, and the moral sanction conferred on it by the fundamental principle of right.

International justice would not be less deserving of that appella-



Spain's weakness prevented her from doing more than protest against the bad faith which actuated Napoleon in selling Louisiana. This she did.<sup>1</sup> But however unheeded went this protest, Spain upheld her claim to the Floridas and consistently insisted from beginning to end of the territorial controversy with the United States that no just interpretation of the St. Ildefonso treaty and of its resultant Louisiana purchase treaty would include any part of West Florida in the Louisiana retroceded to France and sold by that nation to the United States.

Article III of the St. Ildefonso treaty, secretly concluded October 1, 1800, reads as follows:<sup>2</sup>

"His Catholic majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it has now in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and the other States."

The "*extent that it now has in the hands of Spain*" did not mean to include West Florida, for the latter was separate from Louisiana in the Spanish mind; and in governmental ordinances and treaties the Floridas are always specified as distinct from Louisiana, Cuba and other Spanish possessions.<sup>3</sup> "*And that it had when France possessed it.*" When France possessed it between 1763 and 1769, as we

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tion if the sanctions of it were wholly incapable of being enforced. (Phillimore : Commentaries upon International Law, Vol. 1, p. 75.)

<sup>1</sup> Letters of September 4 and September 27, 1803, from Marquis de Casa Yrujo, Minister of Spain, to Secretary Madison, hold that (1) France had renounced right of alienating the acquired territory ; (2) had neglected to carry out provisions of the St. Ildefonso treaty in regard to the Duke of Parma.

<sup>2</sup> Martens : Recueil de Traités, Vol. 10, p. 467.

<sup>3</sup> Galvez held the commission of Governor-General of Cuba, the Floridas and Louisiana.

have seen, it did not include West Florida. "*And such as it should be after the treaties subsequently entered into between Spain and other States.*" Spain entered into no treaty with other States relative to Louisiana until she ceded it back to France in 1800. She had, however, entered into two treaties in regard to the Floridas; one with England, acquiring possession of them (1783), and the other with the United States, fixing their northern boundary (1795).

The Louisiana ceded to Spain by France, and retroceded by Spain to France, did not extend to the Perdido river. The only territory east of the Mississippi river included in the Louisiana transferred and retransferred, was the triangular portion extending from Bayou Manchac and the lakes, down the east bank of the Mississippi to its mouth, and known as the Island of Orleans.

No better argument can be made to support this statement than the unanswerable letter of Tallyrand here appended. Monroe had written Tallyrand under date of Nov. 8, 1804, to invoke his support in the cause of the United States in its claim to West Florida, as Tallyrand was fully conversant with facts connected with the secret St. Ildefonso treaty.<sup>1</sup> Tallyrand replies as follows:

"France, in giving up Louisiana to the United States, transferred to them all the rights over that territory which she had acquired from Spain. She could not nor did she wish to cede any other; and that no room might be left for doubt in this respect, she repeated in her treaty of 30th of April, 1803, the literal expression of the treaty of St. Ildefonso, by which she had acquired that colony two years before. Nor was it stipulated in her treaty of the year

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<sup>1</sup>While the general reputation of Tallyrand would cause one to hesitate before ascribing to any utterance of his undue weight, yet the letter cited bears every mark of sincerity, and may well be taken as strong corroborative testimony. J. L. M. Curry maintains that this letter decidedly weakened the contention of the United States that Louisiana, as purchased, extended to the Perdido river. See Curry: "Acquisition of Florida", Magazine of American History, for April, 1888.

1801 that the acquisition of Louisiana by France was a retrocession: that is to say that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain: the same day France ceded to England by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part and could therefore give back none to France.

"All the territory lying to the eastward of the Mississippi and south of the 32d degree of north latitude bears the name of Florida. It has been constantly designated in that way during the time that Spain held it: it bears the same name in the treaties of limits between Spain and the United States: and in different notes of Mr. Livingston of a later date than the treaty of retrocession in which the name of Louisiana is given to the territory on the west side of the Mississippi: of Florida to that on the east side of it.

"According to this designation thus consecrated by time even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, the country ought in good faith and justice to be distinguished from Louisiana.

"Your Excellency knows that before the preliminaries of 1762, confirmed by the treaty of 1763 the French possessions situated near the Mississippi extended as far from the east of this river toward the Ohio and Illinois as in the quarter of Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone to give the name of Louisiana to the Mobile district as to territory more to the north of it, on the same bank of the river, which formerly belonged to France.

"These observations, sir, will be sufficient to dispel every kind of doubt with regard to the extent of the retrocession made by Spain to France in the month Vendemiaire, year 9. It was under this impression that the Spanish and French Plenipotentiaries negotiated and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before his Imperial Majesty the negociations of Madrid which preceded the treaty of 1801 and his Majesty is convinced that during the whole course of these negociations, the Spanish Government has constantly refused to cede any part of the Floridas, even from the Mississippi to Mobile.

“His Imperial Majesty has, moreover, authorized me to declare to you that at the beginning of the year II, Gen. Bournouville was charged to open a new negociation with Spain for the acquisition of the Floridas. His project which has not been followed by any treaty is an evident proof that France had not acquired by the treaty retroceding Louisiana the country east of the Mississippi.”

Future contributors to the history and cartography of the United States will do well to investigate the subject as outlined in this paper, and by way of suggestion a map is appended indicating the corrections to be made in maps showing acquirements of territory by the United States, if the views set forth in this paper be found substantially correct.

## CHRONOLOGY.

- 1512 De Leon discovers Florida.
- 1519 Pineda explores coast of West Florida.
- 1528 De Narvaez invades Florida.
- 1539-41 De Soto's expedition.
- 1565 Spanish settle St. Augustine.
- 1682 La Salle takes possession of the lower Mississippi Valley.
- 1699 Spanish settle Pensacola.  
French settle Biloxi.
- 1716 Fort Rosalie (Natchez) established.
- 1718 New Orleans founded.
- 1755 War between France and England in America begins.
- 1762 Preliminary Treaty between Great Britain, France, and Spain. (Nov. 3.)
- 1763 Treaty of Paris. Louisiana ceded to Spain; the Floridas to England. (Feb. 10.)  
Proclamation of George III constituting province of West Florida. (Oct. 7.) Johnstone, Governor.
- 1764 Louis XV. commissions M. d'Abadie to deliver Louisiana to the Spanish representative. (April 21.)
- 1766 Ulloa arrives in Louisiana to take possession for Spain. (Mar. 5.) Fails to do so.
- 1767 Great Britain establishes  $32^{\circ} 28'$  as the northern boundary of West Florida. Elliott, Governor.
- 1769 O'Reilly takes possession of Louisiana for Spain.
- 1770 Peter Chester becomes Governor of West Florida.
- 1775 War between England and the English colonies in America begins.
- 1777 France allies herself with America.
- 1778 Willing's raid into West Florida.



- 1779 Spain declares war against Great Britain.  
Galvez, Governor of Louisiana invades West Florida;  
captures Fort Bute. (Sept. 7.)
- 1780 Galvez captures Ft. Charlotte (Mobile.) (Mar. 14.)
- 1781 Galvez captures the English Fort at Pensacola. (May 9.)
- 1783 Treaty of Paris. The Floridas ceded by Great Britain to Spain.
- 1795 Treaty between Spain and the United States. 31st parallel decided upon as the boundary line between the United States and the Floridas.
- 1800 Secret Treaty of St. Ildefonso. Louisiana retroceded to France. (Oct. 7.)
- 1803 Treaty ceding Louisiana to the United States signed. (April 30.) United States takes possession of Louisiana and the Island of New Orleans. (Dec. 20.)
- 1810 Convention of Buhler's Plains, West Florida. (June 10.)  
Memorial to Gov. De Lassus by citizens of West Fla.  
Convention of Baton Rouge. (Aug. 22-25.)  
Treachery of De Lassus discovered. (Sept. 20.)  
Spanish Post of Baton Rouge stormed and captured. (Sept. 22.)  
Independence of West Florida declared. (Sept. 26.)  
West Florida between the Mississippi and Pearl rivers annexed to the United States upon petition of the West Florida revolvers. President's proclamation issued. (Oct. 27.)
- 1812 Louisiana admitted to the Union. (Jan. 22.) Annexed territory of West Florida joined to the State of Louisiana by Act of Congress. (April 14.) Pearl-Perdido portion annexed to Mississippi Territory.
- 1813 United States takes possession of the Mobile district of West Florida. (April 15.)

1819 Florida cession treaty concluded with Spain. (Feb. 22.)

1820 King of Spain ratifies Florida cession treaty. (Oct. 24.)

1821 Cession of the Floridas proclaimed. (Feb. 22.)

Formal transfer of the Floridas to the United States.  
(July 17.)



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Anti-Slavery Leaders  
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History is past Politics and Politics are present History.—*Freeman*.

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Anti-Slavery Leaders  
OF  
North Carolina

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## PREFACE.

When, about three years ago, I began to make a study of slavery in North Carolina I found that there were some men like Mr. Helper, Prof. Hedrick, and Mr. Goodloe, whose participation in the anti-slavery cause demanded a more extended notice than it was possible to give in a general treatment of the subject. Consequently, I have prepared the present sketches. I offer them to the public because it does not seem good that the personalities of North Carolina's contributors to the anti-slavery cause should be forgotten.

For assistance in this work my thanks are due to Mr. Helper, Mr. Goodloe, Mr. Charles J. Hedrick, of Georgetown, D. C., and Dr. Dred Peacock, of Greensboro, N. C.

J. S. B.

APRIL 15, 1898.

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## Anti-Slavery Leaders of North Carolina.

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### THE HOME OF THE ANTI-SLAVERY SENTIMENT.

No section of the old South contained so much anti-slavery sentiment as did the western parts of Virginia, North Carolina and South Carolina, the northern part of Georgia and the eastern parts of Kentucky and Tennessee. This was due to causes entirely natural. The South Atlantic coast region is divided into two distinct kinds of country. Next to the ocean there is a strip of land, varying from fifty to one hundred miles in width, which is a fertile and well watered plain. West of this, and stretching to the mountains, is a hilly region, whose clay soil, though fertile in spots, is not naturally as productive as that lying on the river banks to the east. The eastern division was first settled. It fell almost from the first into the hands of wealthy planters, and soon held many slaves. The western portion, as well as the lands beyond the mountains, was occupied by settlers during the eighteenth century. These came chiefly from Pennsylvania, Maryland, New Jersey and New England. Many of them were Scotch-Irish, and not a few were Germans. Many were persons who had arrived in America a few years before, and who were still poor. Nearly all settled on small farms, which they expected to work with their own hands. Being remote from water communication, they were a long way from market, and consequently industry progressed slowly. They raised most of the articles they consumed, and what they bought they got by carting their wheat or driving their stock from fifty to a hundred miles to Richmond, Va., to Fayetteville, N. C., or to some other point at the head of

navigation of the various rivers that traversed this section. Under such conditions the upland counties remained frugal, industrious, simple and democratic. Here slavery was introduced very slowly. From the conditions of industry, as well as from the habits of the people, slavery had at first little encouragement. Had not the eastern and southern edges of this section been opened to the cotton industry, and had not the raising of slaves for the far South become profitable, slavery very probably would have gained no foothold here.

All the conditions of small farms, simple habits and democratic ideals which have been ascribed to this general region were emphatically attributable to that part of it which lay in North Carolina. The western part of this State, until the railroads were built, about the middle of this century, was very distinct from the eastern part. A line drawn from the Roanoke river at Halifax, through the western parts of Edgecomb, Greene and Lenoir counties, across the center of Duplin and the western part of Pender, thence straight to the Cape Fear river, then continued to the neighborhood of Fayetteville, then across the western end of Harnett, the eastern sides of Wake and Franklin, and thence to the Roanoke river; such a line would enclose a territory which, save for as much of the valleys of the Roanoke, Tar, Neuse and Cape Fear as lay in it, was a level plain, covered with pine forest, and which was not very attractive to immigrants. This region was thinly settled, and until it was cleft by the Wilmington and Weldon Railroad it was not well developed. It remained a "pine barren," and served to divide the east from the west. The counties west of this, except those along the Cape Fear and Roanoke rivers, contained few spots in which slavery had planted itself with any considerable rootage. In the West was, also, no great love of slavery. If a vigorous appeal could have been made against slavery in these counties, they could very likely, at any time before 1860, have been carried for freedom. It is noteworthy that all the anti-slavery leaders the State produced came from within, or near, this region.



Besides the economic and territorial differences between these two regions, one ought to mention a political difference. The counties of the east were small as compared with those of the west. The State Senate was, by the Constitution of 1776, composed of one Senator from each county. The House of Commons was composed of two Representatives from each county and one from each of six designated towns. In 1835 there were in the west twenty-six counties, while there were thirty that might be classed as eastern in spirit. The eastern counties were much smaller than those of the west. This gave the predominance of power to the smaller east. The importance of this is seen in the fact that the selection of the Governor and other executive officers of the State, the judges and the officers of the militia, was left to the Assembly. The west rebelled against this arrangement, and won its rights in the Constitutional Convention of 1835. It was then provided that Senators should be elected from districts formed on the basis of public taxation, and that the members of the House of Commons should be apportioned among the counties on the basis of federal population. The relief for the west is obvious. Of the counties that now had four Representatives, all were western, and of those that had three, nine were western and three eastern; while of those that had only one, twenty were in the east and five in the west, three of the latter being mountain counties, which to this day are very thinly settled. At the same convention the election of Governor was given to the people. Still the gain of the west was not all that it desired. It saw that representation in the House of Commons on the basis of federal population bore severely on it. It was with difficulty that the party leaders could keep this question out of the struggle for the abolition of property qualification for the election of Senators, which was fought through and won, in 1857, after a contest of nine years. Had not the issue of the war removed this inequality, it is safe to say that it would have become an issue between the two sections before many years had

passed. Indeed, if we consider the righteousness of anti-slavery in the abstract, and the superior strength of the vigorous west, it cannot be doubted that, had the question been left to be determined in a peaceful struggle, the west would finally have removed the stain of slavery from the State.

One other factor of the struggle in the west ought to be mentioned. I refer to the Quakers. There were in Guilford, Randolph and adjoining counties a large number of this sect.<sup>1</sup> These were as ardent in the cause of abolition here, in the face of slaveholders, as their brethren had been in Pennsylvania. By the time the colonies were committed to the cause of independence the Friends were committed to the cause of abolition. In the face of harsh laws which made emancipation very difficult, they worked on, liberating their own slaves, and sometimes buying slaves of other people that they might liberate them. Those that they could induce to go they sent to the free States; those that would not go they transferred to the Society and held them in only nominal bondage. Thus by the middle of the century they had worked slavery out of their connection. They ever remained a nucleus for anti-slavery sentiment. They joined with their non-Quaker neighbors in the support of a Manumission Society. They accustomed the people around them to the ideas of anti-slavery, and that was a great advance for that day.

Thus the economic, social and political forces of the western counties made them less friendly to slavery than the eastern counties. Of all the region of the later Confederacy, that which lay in these counties was very probably the strongest in anti-slavery sentiment. It is not strange that out of the sturdy inhabitants of this section there should have come leaders who went so far as to condemn certain

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<sup>1</sup> The Quakers in the Northeastern part of the State were strongly opposed to slavery and supported emancipation; but they did not become so notable for anti-slavery spirit as their western brethren. This was probably because they were in a strong pro-slavery region.

effects of slavery, and boldly to denounce the entire system as iniquitous and unprofitable. The most noted of these leaders were Hinton Rowan Helper, Benjamin Sherwood Hedrick and Daniel Reaves Goodloe. The first two lived within this region, and the third, although he was reared in a county which I have classed as eastern, belonged to the same class of people of small means as made up the mass of the people of the west. One other name ought to be added to these, as well for its prominence in anti-slavery efforts as because it admirably illustrates the conditions under which the contest against slavery must be waged. This person, Lunsford Lane, was a member of the enslaved race itself, and perhaps did his most effective abolition preaching in the way in which he rose above the condition of a slave, purchased his own freedom and that of his family at a cost of \$3500, retaining at all times the esteem of the best people in the community in which he lived, and receiving the explosions of the wrath of the more violent element in the same community.

#### HINTON ROWAN HELPER.

Hinton Rowan Helper was born in Davie county, North Carolina, December 27, 1829. His paternal grandfather was born near Heidelberg, Germany, and came to North Carolina in 1752. His maternal grandfather, who was of English descent, was Cannon Brown, of Virginia. His father, Daniel Helper, married Sarah, the daughter of Cannon Brown, and the pair settled down on a small farm on Bear creek, a tributary of the South Yadkin river. Here there were born seven children, the last of whom is the subject of this sketch. Daniel Helper died in the fall of 1830, and the widow and her seven children, the eldest of whom was less than twelve, were left to support themselves as best they could. They had four slaves, a man and his wife and their two children, and from the labor of these the family managed to live. The training of young Hinton was such as many a backwoods boy gets: rough sports in

the open air, hunting and fishing, all kinds of farm work in season, a little schooling in the neighborhood schools, and finally a term or two in a neighboring academy, which, in this case, happened to be in the village of Mocksville. With such an outfit he found himself at the threshold of manhood. His health was not very robust, but as he grew older he became stronger, and he is now an admirable specimen of well-preserved manhood.

When twenty years old he moved to the city of New York, which he made his home for some months. When he came of age, however, he started off to California, by way of Cape Horn, hoping to make his fortune in the gold regions. At Valparaiso, Chile, the ship stopped for provisions and masts, and this gave the young man his first direct acquaintance with South America, a country with which his later life has been somewhat closely associated. His stay in the gold region was short and unprofitable. In 1854, three years after he had set out, he returned to the farm and settled down to the life in which his boyhood had been spent. Such a life was too dull for him. His mind was active, and he had a store of observations made during his absence. Some minds seem to be set on ball bearings, they work so easily. Mr. Helper seems to have such a mind. His ready use of words and his incisive mental processes easily fitted him for writing. In the quiet of the farm life he wrote an account of his journey, which he called "The Land of Gold." In 1855 the work was ready for the press. He made arrangements for publication with Mr. Charles Mortimer, of Baltimore, then the publisher of the *Southern Quarterly Review*, and a strong pro-slavery Virginian. In his travels Mr. Helper had found no slave labor. He had been struck with the superiority of free labor. This, he concluded, was particularly true of the cities; and he thought that slaves should be relegated to the country. The work of printing had progressed to some extent when the publisher discovered these sentiments. He refused to print them. The author, anxious for the safe delivery of his first-born, and having already paid \$400 for work done on the book, was in despair.



He hesitated as to what to do, and at length told the printer to do as he chose with the matter. Mortimer then cut out the objectionable passages and published the book.

The result of this course was important. The young man, chagrined at what he deemed an outrage, determined that he would be heard. He returned to North Carolina and began an extensive study of the question of slavery. In a year he had formulated his views. In June, 1856, a few days after the nomination of Fremont for the Presidency, he started again for the North, taking with him the manuscript of "The Impending Crisis of the South." In Baltimore he stopped long enough to aid in forming a Republican association, one of the first in the South, and destined soon to be broken up by a pro-slavery mob. He hardly expected to get a publisher for his work in this city; but he, nevertheless, tried to secure one. Failing completely, he went on to New York. Here he found more sympathy for his views, but only a little aid in putting them before the public. The work was offered to the Harpers, Scribner, Appleton and all the other regular publishers, but not one would take it. In his despair he offered the manuscript for nothing, but the offer was not accepted. They all declined, because to publish such strong anti-slavery views, or to have them brought out in connection with their firms, would drive away their Southern patronage. Mr. James Harper, an Abolitionist himself, and a man to whom Mr. Helper had brought a letter of introduction, said to the young author, with great frankness, that while he concurred with the book in its hostility to slavery, and found it worth bringing out, yet, after consulting with his business partners, it had been decided that publishing it would cause the firm to lose at least twenty per cent. of their annual trade. In view of such a fact, they did not dare to undertake the work.

These were no doubt wise business methods, but they disheartened the author. Between seven and eight months he spent going from one publisher to another. How much he suffered in the meantime will not be easily imagined. Convinced that he had a great principle at stake, he was deter-



mined to exhaust every energy to accomplish his task. This long period of waiting was endured with steadfastness. He was committed to the right of being heard on a question on which his opinions had once been suppressed. He felt that he was demanding vindication. At length, worn out with anxiety and disgusted at what he thought a lack of courage on the part of the publishers, he decided to accept an offer made by Mr. A. B. Burdick. That gentleman, who was a book agent rather than a book publisher, agreed to issue the book in his own name, Mr. Helper having previously secured him against loss. The venture proved a handsome success. Mr. Burdick made a fortune from the sales, but, unfortunately, lost it in stock speculation.

"The Impending Crisis of the South" was well calculated to attract attention in the North. The author was a Southerner, not of the slave-holding aristocracy, but of the class of small farmers. He approached the question from the economic side, while other anti-slavery writers had approached it from the side of the rights of the negro. The literary style was clear and cutting. The author wrote in behalf of the non-slaveholding whites of the South, for whom he claimed an opportunity to make a living. There was a grim directness in the following words, taken from the preface to the first edition: "The genius of the North has also most ably and eloquently discussed the subject in the form of novels. New England wives have written the most popular anti-slavery literature of the day. Against this, I have nothing to say; it is all well enough for women to give the fictions of slavery; men should give the facts." In the same preface he referred to the fact that he was a Southerner, as proud as any of his birthplace, and added: "As the work, considered with reference to its author's nativity, is a novelty, \* \* \* so I indulge the hope that its reception by my fellow-Southrons will be novel; that is to say, that they will receive it as it is offered, in a reasonable and friendly spirit, and that they will read it and reflect on it as an honest endeavor to treat a subject of vast import with-

out rancor or prejudice, by one who naturally comes within the pale of their own sympathies."

These were fair words; but Mr. Helper must have known well when he wrote them that his book would receive little favor in the South. If he hoped otherwise, he was soon undeceived. The appearance of the work in the summer of 1857 was the signal for a flood of denunciation from that quarter. It was at once declared to come within the provision of the laws against the circulation of incendiary literature. To own a copy was against good taste, and traitorous to the interest of the South. In 1859 John A. Gilmer was the Whig candidate for the governorship in North Carolina. His opponents charged him with owning a copy of "The Impending Crisis." His friends replied by declaring that John W. Ellis, the Democratic candidate, had a copy. The *Raleigh Standard*, the leading Democratic paper of the State, indignantly denied the charge against Ellis. The truth of the matter, it said, was that in 1858, while Ellis was in New York, Mr. Helper, who had known him in North Carolina, called on him and later on sent a copy of the book. This Mr. Ellis threw out of the window. Sometime later Governor Ellis received another copy through the mails, and that he used for lighting his pipe.<sup>1</sup> Making bonfires of the book was a mild feature of its reception in many parts of the South. The Northern papers reported that a number of persons were hanged or otherwise killed for having copies in their possession. The truth of the latter statement it has been impossible to prove.

The enemies of Mr. Helper tried to break down his arguments by blackening his character. It was charged that he had taken fraudulently a sum of money from an employer in Salisbury, N. C., and that when accused of the crime he had admitted it, alleging that he was at the time only seventeen years old, and that another clerk had induced him to take the money. This charge was repeated by Senator Biggs, of North Carolina, in a congressional debate, in

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<sup>1</sup> *Raleigh, N. C. Standard*, Aug. 10, 1859.

1857.<sup>1</sup> Mr. Helper and his friends indignantly denied the charge, and produced a certificate from his former employer stating that it was false.<sup>2</sup> This accusation continued to be repeated by the Southerners.<sup>3</sup> The *Standard* believed the charge, and doubtless but echoed public sentiment in the State when, in 1859, it said that Helper was good enough for the Abolitionists; he stole money, while Greeley and Thurlow Weed wanted to steal slaves: there was no difference.

The reception of "The Impending Crisis" by the Northern public, while favorable, was not immediately flattering. Its great popularity was doubtless caused by the political interest that sprang out of it. This came about in this way: In 1857 a gentleman from Rhode Island, whose name is not given, acting in conjunction with Mr. John Bigelow, associate editor of the *New York Evening Post*, made arrangements to print 100,000 copies of a compendium of "The Impending Crisis." The panic of that year coming on soon after, the project was dropped. In March, 1859, the scheme was revived in a different form. A number of gentlemen, among whom were Samuel E. Sewell, Cassius M. Clay, F. P. Blair, Jr., Charles W. Elliot, David Dudley Field and Charles A. Peabody, now issued a circular, calling for subscriptions to a fund of \$15,000 in order to print, as a campaign document, 100,000 copies of such a compendium. The circular said, among other things: "No other volume now before the public, as we conceive, is, in all respects, so well calculated to induce in the minds of its readers a decided and persistent repugnance to slavery and a willingness to coöperate in the effort to restrain the shameless advances and hurtful influences of that pernicious institution." The scheme was endorsed by the leading Republican members of Congress, among whom were Messrs. Colfax, Grow, Gid-

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<sup>1</sup> Raleigh, *N. C. Standard*, Dec. 7, 1859.

<sup>2</sup> The *New Englander*, Vol. 15, p. 647.

<sup>3</sup> See Samuel M. Wolf's "Helper's Impending Crisis Dissected" (1860), p. 75.

dings, Dawes, Washburn and John Sherman, and by the most prominent Abolition leaders, among whom were Thurlow Weed, Wm. Cullen Bryant, B. S. Hedrick and Horace Greeley. The latter gentlemen declared: "Were every citizen in possession of the facts embodied in this book, we feel confident that slavery would soon pass away, while a Republican triumph in 1860 would be morally certain." It is of interest to know that of the amount collected, North Carolinians subscribed \$165. Among the subscribers were Professor Hedrick and Mr. Goodloe, whom the *Raleigh Standard* described as "two other recreant sons of this State."<sup>1</sup>

The plans thus set forth were accomplished. One hundred thousand copies of the compendium were printed in 1860 and distributed throughout the doubtful States of Pennsylvania, New Jersey, Indiana and Illinois. In their estimate of the book the Abolitionists were right. Its style cut like a knife. It showed clearness, conviction, and a certain intensity which would likely make a more striking appeal to the voters than the more restrained statements of a more scholarly work. It was not free from the vivid rhetoric to be expected from a self-taught young man from the backwoods, and yet, for the purposes in view, this was no disadvantage.

The success of this circular was not calculated to soothe the feelings of the Southern Democrats, whose feelings were already at the highest pitch. Their newspapers took up the matter, publishing extracts to show that "The Impending Crisis" was incendiary. To the Southerners this was a deliberate purpose of the Republicans to arouse the entire North against the South. Shortly after the compendium scheme was assured there occurred John Brown's attacks on Harper's Ferry. The South was more convinced than ever of the harmfulness of the book which the Abolitionists were using to propagate their doctrines. While affairs were in this shape Congress met. The caucus nominee of

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<sup>1</sup> *Raleigh Standard*, Dec. 7, 1859.



the Republicans for the Speakership was John Sherman, who, with other Congressmen, had signed the above-mentioned circular. To his election the Southerners opposed their strongest efforts. As soon as Congress met a resolution was introduced which declared "That no person who has endorsed and recommended [Helper's] book, or the compendium from it, is fit to be Speaker of this House." One of the fiercest debates in the history of that body now began. Southern members used the bitterest threats. Members on each side went armed, fearing a resort to force. The debate on the resolution was dropped long enough to take some ballots for Speaker, but without any election. Ignoring the usual holiday recess, the contestants went on until, on January 30, 1860, Sherman withdrew his name. Three days later Pennington, of New Jersey, was elected by the Republican and American votes.<sup>1</sup>

The attracting of public attention to "The Impending Crisis" had a most exciting effect on its sale, which hitherto had not been extraordinary. The demand for it was now immense. Copies might be seen in stacks on every news stand and in every book store of the North. Some pro-slavery men tried to prevent its sale. The president of the Norristown Railroad Company ordered that it should not be sold in the railroad cars, the gentlemen's waiting-rooms, or the railway stations.<sup>2</sup> Such efforts were in vain. By the autumn of 1860, 142,000 copies, including the compendium, had been sold. It is doubtful if any other American book not fiction, except, perhaps, Mr. Harvey's "Coin's Financial School," has reached so great a circulation in so short a time. Had the war not begun in 1861, which destroyed the occupation of more Abolitionists than one, the circulation would have gone much higher.

A more impartial view of the book from a scholar's standpoint would be the book reviews it received at the time it

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<sup>1</sup> See the preface of the "Impending Crisis," (1860).

<sup>2</sup> See Garrison's *Liberator*, Jan. 20, 1860.



was published. *The New Englander* (Vol. 75, p. 635, 1857), in calling attention to the fact that the author wrote from the side of sociology, said: "On the subject in this department he has made the most complete and effective presentation within our knowledge. It is thorough, reliable, demonstrating, overwhelming. It consists of facts which cannot be denied or gainsaid; facts derived to a large extent by careful examination and comparison from the census, which cannot be suspected of anti-slavery bias, since it was compiled under the direction of an eminent statistician who is notorious for his pro-slavery principles and zeal." *The Westminster Review*, having less interest in the conflict, and being more critical in point of style, said, with much justice: "The style of production is peculiarly American. Its language and ideas alike are often extravagant, and its allusions sometimes very personal. Statistics and other facts are well arranged and fully authenticated, but the conclusions of the author are not always correct, and occasionally exhibit a want of practical political knowledge.<sup>1</sup>

The burden of Mr. Helper's story was the benefiting of the non-slaveholding whites of the South. These ought to be distinguished from the "poor whites." The latter were a class, in themselves more or less shiftless, living around among the large plantations, without ambition and mostly in extreme poverty. They were largely wrecks, both industrial and moral, on the shores of society; although a child occasionally came out from among them whose efforts enabled him to reach a high place in society. The former class were the small farmers who worked their lands without slave labor. They were most numerous in the west, among the Scotch-Irish and the Germans. They were thrifty and sturdy, and when they removed to the Northwest, as many of them did to escape the effects of slavery, they proved valuable citizens. Emancipation of the slaves would have been a blessing to either of these classes. By it one class would have been raised slowly from degrada-

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<sup>1</sup> Vol. 75<sup>7</sup>(1861), p. 81.

tion to respectability, the other from respectability to wealth. What either of these classes suffered from the slaveholders is seen in this extract from Helper: He says there were several kinds of pine near his boyhood home, "by the light of whose flammable knots, as radiated on the contents of some half-dozen old books, which, by hook or crook, had found their way into the neighborhood, we have been enabled to turn the long winter evenings to some advantage, and have thus partially escaped from the prison grounds of those loathsome dungeons of illiteracy in which it has been the constant policy of the oligarchy to keep the masses, the non-slaveholding whites and the negroes, forever confined."<sup>1</sup>

To improve the condition of this class it was necessary to abolish slavery. He started out to learn "why the North has surpassed the South." He boldly attacked the notion that the South excelled the North in agriculture. From the census of Professor De Bow himself, who was a strong Southerner, he showed that in bushel-measure products the North was far ahead of the South, and that the hay crop alone of the North was worth more than all the cotton, tobacco, rice, hay, hemp and cane-sugar raised in the South. This comparison was also made in regard to farm animals, total wealth, gross expenditure and various other items from the census columns. These arguments, inasmuch as they attempt to prove the superiority of free labor over slave labor, were well taken. The North and the South had begun the period of national existence about equal in resources and opportunity. That the latter section had fallen so far behind must be due to slavery. In summing up this feature of the question he uttered the following characteristic sentence: "It makes us poor; poverty make us ignorant; ignorance makes us wretched; wretchedness makes us wicked, and wickedness leads us to the devil."

Sound as the argument was, there was much that was calculated to make Southern blood boil. It was a time of stern

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<sup>1</sup> *The Impending Crisis*, p. 110.

<sup>2</sup> *Ibid.*, p. 74.

conviction. Each side had little of the spirit of toleration. Mr. Helper ought not to be blamed, perhaps, that he did not rise above the spirit of his surroundings. Certain it is, he was no master of saying unpleasant truths in a palatable way. At times he spoke bluntly, often bitterly. In one place he exclaims: "No man of genuine decency and refinement would have them [the negroes] as property on any terms."<sup>1</sup> Speaking of the increase that would be realized in the value of lands if slavery were abolished, he said, addressing the slaveholders: "Now, sirs, this last sum is considerably more than twice as great as the estimated value of all your negroes, and those of you, if any there be, who are yet heirs to sane minds and generous hearts, must, it seems to us, admit that the bright prospects which freedom presents for a wonderful increase in the value of real estate, ours as well as yours, to say nothing of the thousand other kindred considerations, ought to be quite sufficient to induce all the Southern States in their sovereign capacities to abolish slavery at the earliest practicable period."<sup>2</sup> In the same spirit he finds in the South "three odious classes of mankind; the slaves themselves, who are cowards; the slaveholders, who are tyrants; the non-slaveholding slave-hirers, who are lickspittles."<sup>3</sup> He arraigned severely "the illbreeding and ruffianism of the slaveholding officials" for their conduct in Washington, where, "on frequent occasions, choking with rage at seeing their wretched sophistries scattered to the winds by the logical reasoning of the champions of freedom, they have overstepped the bounds of common decency, vacated the chair of honorable controversy, and, in the most brutal and cowardly manner assailed their unarmed opponents with bludgeons, bowie-knives and pistols. Compared with some of their barbarisms at home, however, their frenzied onslaughts at the National Capital have been but the simplest breach of civil deportment, and it is only for the purpose of avoiding personalities that we refrain from divulging a few instances of the unparalleled

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<sup>1</sup> *The Impending Crisis*, p. 75.    <sup>2</sup> *Ibid.*, p. 107.    <sup>3</sup> *Ibid.*, p. 118.

atrocities they have perpetrated in the legislative halls south of the Potomac. \* \* \* A few years of entire freedom from the cares and perplexities of public life would, we have no doubt, greatly improve both their manners and their morals; and we suggest that it is a Christian duty, which devolves on the non-slaveholders of the South, to disrobe them of the mantles of office, which they have so worn with disgrace to themselves, injustice to their constituents, and ruin to their country.”<sup>1</sup>

The last sentence brings up the non-slaveholders, whose wrongs he breathed out as fire. He said to the slaveholders “Do you aspire to become the victims of white non-slave holding vengeance by day, and of the barbarous massacre of the negroes by night? Would you be instrumental in bringing upon yourselves, your wives and your children, a fate too horrible to contemplate? Shall history cease to cite as an instance of unexampled cruelty the massacre of St. Bartholomew, because the world—the South—shall have furnished a more direful scene of atrocity and carnage? Sirs, we would not wantonly pluck a single hair from your heads; but we have endured long, we have endured much; slaves only of the most despicable class would endure more. \* \* \* Out of your effects you have long since overpaid yourselves for your negroes, and now, sirs, you must emancipate them—speedily emancipate them or we will emancipate them for you!”<sup>2</sup> This extract smacks of insurrection. In another place this is found: “In reason and in conscience, it must be admitted, the slaves might claim for themselves a reasonable allowance of the proceeds of their labor. If they were to demand an equal share of all the property, real and personal, which has been accumulated or produced through their effort, heaven, we believe, would recognize them as honest claimants.”<sup>3</sup> These sentiments seemingly grew out of a commendable sympathy for the slaves, and they had a certain justification in facts, yet it is impossible

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<sup>1</sup> *The Impending Crisis*, pp. 131-2.

<sup>2</sup> *Ibid.*, p. 106.

<sup>3</sup> *Ibid.*, p. 142.



not to see that preaching them to the slaves would have tended to arouse the negroes to insurrection. It is but just to add that such extreme statements occur rarely, and charity should prompt us to think that when they do occur they are but temporary feelings which sober action would repudiate.

But it was the effect that the book might have on the non-slaveholding whites, more than its effect on the negroes, that the slave-owners feared. Well might they have feared on this score. In 1850 the white population of the slave States was 6,184,477. About 1,200,000 of these must have been voters. Mr. Helper calculated on the basis of De Bow's census that not more than 200,000 slaveholders were voters.<sup>1</sup> Accordingly, the non-slaveholding voters must have had a vast majority of the votes. What must have been the result if these votes could have been united against the slave power? He appealed to the non-slaveholders. He told them that they had had all the burdens of government and none of the benefits of legislation; they had furnished the fighting force of the armies of the South, yet they had never received from the legislators even "the limited privileges of common schools," while the slaveholders had gone to the North for their teachers and their skilled mechanics, and when asked to do so had contemptuously refused to redress the wrongs of the non-slaveholders. Today this may suggest the demagogue, but there is a deal of truth in it. The remedy must be political. He said: "Give us fair play, secure to us the right of discussion, the freedom of speech, and we will settle the difficulty at the ballot-box." His programme embraced seven principles: "1. Thorough organization and independent political action on the part of the non-slaveholding whites of the South. 2. Ineligibility of pro-slavery slaveholders; never another vote to anyone who advocates the retention and perpetuation of human slavery. 3. No coöperation with pro-slavery politicians; no fellowship with them in religion;

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<sup>1</sup> *The Impending Crisis*, p. 117.



no affiliation with them in society. 4. No patronage of pro-slavery merchants, no guestship in slave-waiting hotels; no fees to pro-slavery lawyers; no employment of pro-slavery physicians; no audience to pro-slavery parsons. 5. No hiring of slaves by non-slaveholders. 6. Abrupt discontinuance of subscriptions to pro-slavery newspapers. 7. The greatest possible encouragement to free white labor."<sup>1</sup>

To put these measures into force he proposed the calling of a convention of non-slaveholders from every State in the Union. This should devise the means of fighting slavery, and should publish a platform of principles and invite the support of the non-slaveholders of the South and Southwest. The tendency of this scheme toward Republican politics is evident. Of course the Democrats opposed it. Exceptions can only be taken to the methods by which they opposed it. It is not difficult to imagine the fate of a half-dozen Republican speakers, who, acting on Mr. Helper's suggestion, might have gone to North Carolina to organize the non-slaveholding whites. An illustration of what would have befallen them we have in the experience of Rev. Daniel Worth. Were it not that slavery and the fortunes of many good but mistaken people went down so disastrously in the avalanche of war, words could not be found too strong to denounce the false spirit that made it impossible to preach in a fair manner a doctrine of simple political principles and to appeal in a constitutional way to the best intelligence of those who were recognized as legal voters. More unfortunate than reprehensible was it that the spirit of intolerance had so taken possession of some of the leading people of the State as is shown by the incident which will now be related.

Rev. Daniel Worth was a native of Guilford county, North Carolina, where, in early life, he had been a justice of the peace. Later he removed to Indiana, and at length became a member of the legislature in that State. Late in 1858 he returned to the neighborhood of his birthplace as a

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<sup>1</sup> *The Impending Crisis*, pp. 123-4.

preacher in the Wesleyan Methodist Church. He preached the doctrine of his church, which was strongly anti-slavery, not without criticism, but, on account of the good feeling for his kinsmen, who were prominent people, without molestation. He planted a church at Sandy Ridge, near Jamestown, in Guilford county, and his postoffice was New Salem. His church had but few members. He aroused the opposition of many Quakers, most of whom were for non-intervention in regard to slavery. Worth thought they should be more positive in their opposition.

In December, 1859, after the Harper's Ferry affair, Mr. Worth was arrested on the charge of circulating Helper's book, and of preaching in a way "to make slaves and free negroes dissatisfied with their condition." He was required to give bond of \$5000 for his appearance at the Superior Court the following spring, and of \$5000 more to keep the peace. The first bond he gave. The second he thought unjust, and would not give. He was accordingly confined in the Greensboro jail throughout the winter. While there the sheriff of Randolph county arrested him on the same charge, and bound him over to the spring court. Other sheriffs waited around the place for him, fearing that he might be released and escape. While he was in prison five other men were arrested in Guilford and several more in Randolph, charged with having distributed Helper's book. One of these was Jesse Wheeler and another was an old man named Samuel Turner. All of these seem to have been natives who were converted by Mr. Worth's appeals. The *Raleigh Standard* bore witness to his success. It said that a few months before this occurrence only one copy of the *New York Tribune* came to Mr. Worth's post-office, and that came to Mr. Worth himself. Now twelve copies were received there. To this it added: "We think it probable that one hundred to two hundred copies of the *Tribune* are circulated in this State, together with numerous abolition pamphlets from Indiana and Ohio." Wheeler alone was said to have distributed more than fifty

copies of "The Impending Crisis." On his trial before the magistrate that committed him, Mr. Worth read from the book in order to show that it was not incendiary, a proceeding which the *Raleigh Standard* seems to have considered especially provoking.

The arrest occasioned great excitement in the vicinity, and for a time crowds surrounded the jail. A great crowd was in the courtroom when the case finally came to trial. The case was taken up and finished in one sitting. It was midnight when it went to the jury. In his charge the judge is reported to have said that "to sustain the allegation of seeking to excite the slaves and free colored people to discontent, it was not necessary to prove that the book had been read by or recited to a free negro or slave, or that any such knew anything or any part of its contents."<sup>1</sup> The jury returned at 4 A. M. with the verdict of "guilty." The jury, said the Fayetteville (N. C.) *Presbyterian*, was composed largely of non-slaveholders.<sup>2</sup> The legal penalty was imprisonment for not less than one year and the pillory or the whipping-post, in the discretion of the judge. The court remitted the whipping on account of the age and calling of the prisoner, and sentenced him to one year's imprisonment. Many of the bystanders, said the *New York Tribune*, regretted the leniency of the court, and hoped that a more severe judge in another county might add the whipping. From this judgment the prisoner appealed to the Supreme Court of the State, and giving a bond of \$3000, he was released. He at once repaired to New York city, where he made anti-slavery speeches and tried to raise money enough to repay the loss of his bondsmen. His bondsmen were his sympathizers, and the court records show that they were required to pay the forfeited bonds. On appeal, the judgment of the lower court was confirmed. It is likely that the authorities of Guilford were glad to be rid of him, so much attention was his case attracting in the North. He

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<sup>1</sup> See *N. C. Standard*, Jan. 4, 1860. Dec. 14 and 21, 1859.

<sup>2</sup> Copied in *The Liberator*, June 15, 1860.

lived through the war that settled the question of slavery, and died within two years after its termination.<sup>1</sup>

After the publication of "The Impending Crisis," Mr. Helper did not feel that it would be safe for him to return to his home. He accordingly remained in New York in business. In 1861 President Lincoln appointed him Consul to Buenos Ayres. He arrived at his post in the following spring. In 1863 he married Miss Mary Louisa Rodriguez, of Buenos Ayres. His official services at this place were satisfactory, but uneventful. In November, 1866, he resigned his position and sailed for America. He made his home in New York city, where, with some interruptions, he has since continued to reside.

It was about the time of his return from South America that he severed his connection with the old leaders of the anti-slavery cause. When he took up the study of slavery he took it up merely as it affected the whites. He never was an advocate of the equal rights of the negro. On the contrary, he has always had too violent aversion for them. To this day he will have nothing to do in a business way with any hotel or other enterprise that employs negroes. He regards the negro as an inferior race, without possibility of satisfactory progress, and would hail with delight the day when not one of the race should be in the country. These views are not wanting in "The Impending Crisis;" but in 1857 they were overshadowed, both in his own and in the popular mind, by the question of the evil effects of slavery on the whites. With the question of slavery gone, his mind turned to the negro. He saw how much the presence of the negro had retarded Southern progress, and he conceived a positive dislike for the whole race. While in Buenos Ayres a friend requested him to furnish American papers of protection to a negro, but he stoutly declined, on the ground that the "United States of America are already burdened with four million too many" of negroes.

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<sup>1</sup> See Helper's "Nojoque", p. 199.



When he returned to North America the Republicans were coming to deal with the negro problem. Their attitude did not meet with his approval. His pen, always facile, at once went to work; and by the middle of the next year he published "*Nojoque, a Question for a Continent.*" Mr. Helper's best friends must regret that he should have written this book. It is a severe, and, at times, an unreasonably violent, attack on the negro. It assailed, in the strongest way, what it stigmatized as the "*Black Congress,*" and proposed an alliance between white Republicans and loyal Democrats, which, having secured control of the government, should offer the negroes aid to get out of the country by a specified time. Those that did not go should be sent away by main force or "be quickly fossilized in bulk beneath the subsoil of America." The plan was, in short, to expel as many as could be persuaded to go, and to massacre the others. As a part of the history of the time, the book deserves no consideration. It is only in connection with its author, who did before this a great part in a most important work, that it need be mentioned at all. It is charitable to say that recent events had so accustomed Mr. Helper to death that he was inconsiderate of the value of human rights and human life. As to his estimate of the negro, it is enough, in view of the development of opinion on the subject both North and South, to say that he underestimated the blacks. Two other books in the same spirit followed closely on "*Nojoque.*" These were "*Negroes in Negro-land,*" and "*Noonday Exigencies.*"

One result of these later books was to sever completely his relations with the old leaders of the Abolitionists. His failure to accept the theory of the equality of man had always prevented them from receiving him with warmth. They now dropped him altogether, and Henry Wilson, in 1875, when he wrote the "*History of the Rise and Fall of the Slave Power in America,*" failed to give him credit for the great influence of "*The Impending Crisis.*" The cause seems to have been the views of the negro problem expressed in these post-bellum publications.



Mr. Helper's later years have been given to the promotion of the Intercontinental Railroad, a scheme by which it is proposed to build a railway from some point in the upper Mississippi basin, through Mexico and Central America, across the highlands on the east of the Andes and across the plains to Buenos Ayres. Later developments would extend this road until it should at last reach the Hudson Bay on the north, and the Straits of Magellan on the south. He removed to St. Louis, Mo., that he might better push this scheme. With characteristic ardor he offered large prizes for the five best essays on the advantage of his scheme, and then published these essays at his own cost. In various ways he has spent on this project \$48,000 out of his own pocket. The recent Pan-American Congress took up the matter and secured appropriations by the various nations for the support of an Intercontinental Railway Commission, which has offices in Washington city. Three corps of engineers have been sent to survey the routes. Their work is accomplished, and the reports will soon be published.<sup>1</sup> In the meantime certain roads have been built independently of one another, which may easily be used as sections of the proposed larger system. The evident advantage of such a road makes it certain that as the countries through which it will pass become more thickly settled it will necessarily be built. Mr. Helper's scheme, and the most commendable persistence he has shown in his thirty years of sacrifice and effort in its behalf, has drawn the eyes of business men toward the opportunity, and in the day when it shall be made a real fact the pluck of its promoter will be appreciated by the public. At present Mr. Helper remains a hale and active man of sixty-seven, kind to those who call on him, and ever hopeful for the project which he has on his hands.

#### BENJAMIN SHERWOOD HEDRICK.

Benjamin Sherwood Hedrick, eldest son of John Leonard Hedrick and Elizabeth Sherwood Hedrick, was born in

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<sup>1</sup> This fact was recorded in 1896. Later information is not at hand.

Davidson county, near Salisbury, N. C., February 13, 1827. The name indicates that the family was sprung from the German stock, which had a large share in settling this part of the State. John Leonard Hedrick was a farmer on a moderate scale. He was able to give his children the advantages of the neighborhood schools, and to give them enough property to serve for a start in life. The boy, Benjamin, attended the neighborhood schools, and fitted for college under Rev. Jesse Rankin, a Presbyterian minister of Salisbury. There is a story, told and reiterated in the heat of the controversy that afterwards arose, that his father offered him the choice of a college education or property enough to begin life on. For the boy there could be no hesitation in a case like this. He took the opportunity to get an education. In 1847 he entered the university of the State at Chapel Hill, and in 1851 he graduated with the highest distinction. His mind was of a scientific turn, and he made fine progress in chemistry and mathematics. At this time Hon. W. A. Graham, Secretary of the Navy, and a native North Carolinian, asked President Swain, of the university, to recommend a young man to be appointed as clerk in the office of the Nautical Almanac. President Swain recommended Mr. Hedrick, who immediately received the appointment. The duties of this office seem to have been at Cambridge, Mass., and by this means the young graduate was able to take advanced instruction in Harvard College. While there he studied chemistry under the great Agassiz. In 1852 he was married to Miss Mary Ellen Thompson, daughter of William Thompson, of Orange county, North Carolina. In 1854 he was recalled to his *Alma Mater* to take the Chair of Analytical and Agricultural Chemistry. This position he held until October, 1856, when he was expelled from the faculty for causes connected with his views on slavery.

It is not hard to trace the development of Professor Hedrick's views on slavery. His birth and his early surroundings had put him in sympathy with that large number of

small farmers in the western part of the State, who, as we have already seen, were generally opposed to slavery. His boyhood home was near Lock's Bridge, on the Yadkin river, and on the road that led through that part of the State from Virginia to South Carolina. He declared that he had seen on this road as many as two thousand slaves in one day going to the south, and most of them in the hands of speculators. This seems to have made a deep impression on his sensitive nature. In later life he became convinced that it was a very harmful taking away of property which ought to be left in the State to develop it. The people around him had great cause to complain of slavery. They were mostly workers themselves, and felt all the hardships that free labor must suffer in competition with slave labor. Many of them, through this very reason, had been driven from the State. "Of my neighbors, friends and kindred," said Professor Hedrick in his defence, "nearly one-half have left the State since I was old enough to remember. Many is the time I have stood by the loaded emigrant wagon and given the parting hand to those whose faces I was never to look upon again. They were going to seek homes in the free West, knowing, as they did, that free and slave labor could not both exist and prosper in the same community." This statement he supported by showing that in 1850, according to De Bow's census, which ought to be good Southern authority, there were in Indiana alone 33,000 native North Carolinians, while in all the free West there were 58,000. This was enough to make an Abolitionist out of a less responsive nature than Professor Hedrick's. These facts had an early influence on him. His stay in the North only confirmed this conclusion. It was easy enough for a young man of the planter class, used to the luxury of his Southern home, to spend some time in the North without becoming convinced that in general social welfare the North was ahead of the South. It was far easier for a young man of the middle class, used to the hardships and limitations of the

free labor of the South, to go to the North and come to an entirely opposite conclusion; and it was not a very remote mental process to conclude, further, that this difference was due to slavery. Young Hedrick was sprung from the middle class of farmers, and his mind naturally went through the process that has been indicated.

All accounts of Professor Hedrick agree that he was a man of singular gentleness of character. In a private letter to the writer, Mr. Hinton R. Helper, who knew Professor Hedrick well, says: "With all his virtues, and he was full of them, modesty, amounting almost to bashfulness, was one of his peculiar characteristics." Such a man was not likely to create strife deliberately. Honest, gentle, intelligent, he was, it is but fair to think, more competent to know the right thing to do in the position in which he was placed than we whom a wide interval of time and interests has removed from him. Let us assume in what shall follow that he acted as properly as one might expect from a man of such a character.

In August, 1856, there was an election of State officers in North Carolina. Professor Hedrick went to the polls in the village of Chapel Hill, in which the university is located, and voted for the Democratic candidates. A bystander asked him if he intended to vote the same ticket in the national election in November following. It is likely that his views on slavery were known, and that this question was asked to make him commit himself in public. He replied that he did not know. He was then asked if he would vote the Whig ticket, and he answered in the negative. Finally he was asked if he would vote for Fremont. To this he answered very frankly that he would so vote if a Republican electoral ticket should be formed in the State. There was no attempt to conceal his intention, and it at once became known among both students and villagers. Mr. Helper, in the letter already quoted, says that time and time again Professor Hedrick assured him that he never once sought to



disseminate his views among the students or other persons around the place.

This was in August. No active opposition seems to have been made to these views by those closely associated with him who held them. In the *North Carolina Standard*, Raleigh, N. C., the leading Democratic newspaper of the State, there appeared on September 13, 1856, a short article under the title, "Fremont in the South," the concluding paragraph of which declared: "If there be Fremont men among us, let them be silenced or required to leave. *The expression of black Republican opinions in our midst is incompatible with our honor and safety as a people.* If at all necessary, we shall refer to this matter again. Let our schools and seminaries of learning be scrutinized; and if black Republicans be found in them, let them be driven out. That man is neither a fit nor a safe instructor of our young men who even inclines to Fremont and black Republicanism." The editor of the *Standard*, Mr. W. W. Holden, was a man of strong editorial ability. He is said to have boasted that in North Carolina affairs he could kill and make alive. It seems to have been in some such spirit as this that he now turned his guns on the Abolitionist in the university faculty. It was undoubtedly his deliberate purpose to drive Professor Hedrick from his position. Two weeks after the appearance of the article just quoted, the *Standard* contained a communication, signed "An Alumnus," which brought up the subject in a more direct manner. The writer began by calling attention to the danger of sending Southern youths to Northern colleges, where they would be taught "black Republicanism," and then shifted to the article in the issue of September 13, just mentioned. He goes on to say: "We have been reliably informed that a professor in our State university is an open and avowed supporter of Fremont, and declares his willingness, nay, his desire, to support a black Republican ticket, and a want of a Fremont electoral ticket in North Carolina is the only barrier to this Southern



professor from carrying out his *patriotic* wishes. *Is he a fit or safe instructor for our young men?*" This professor, says Alumnus, ought to be dismissed from his position, and if the faculty and trustees have no power to dismiss him, the legislature at its approaching session ought to take up the matter. With feelings highly outraged, he asks: "Upon what ground can a Southern instructor, relying for his support upon Southern money, selected to impart healthy instruction to the sons of Southern slave-owners, and indebted for his situation to a Southern State, excuse his support of Fremont with a platform which eschews the fathers of his pupils and the State from whose university he received his station?"

All this was plainly aimed at Professor Hedrick. He consulted his friends as to what he should do. He was advised to say nothing, since any defence he should make would not be believed. One of his colleagues made a visit to Hillsborough about that time, and came back with the information that the articles in the *Standard* had made a deep impression on the inhabitants of that town. Several of the trustees were said to be denouncing Professor Hedrick as an "Abolitionist," which he was, and as "a stirrer up of the poor against the rich," which he certainly was not. The accused remained silent no longer. He wrote a defence of his position, which was published in the *Standard* of October 4, 1856. Had he been playing a game with his enemies this would have been a bad play. It gave them an opportunity of bringing a definite charge against him. Had he kept silent, the burden of proof would have remained on them. Moreover, it gave them an opportunity of avoiding the real issue, and of proceeding against him for taking part as a professor in the university in partisan politics; although it must be confessed that it was in the slightest sense partisan to express a preference for a party that was not organized or likely to be organized in the State in which he must vote. On the other hand, Professor Hedrick had his rights. He was a self-directing and a self-accounting citizen, and it

was perfectly right for him to express his opinion on a public question about which he was being abused in the public prints. Regardless of the question of expediency, his course was ingenuous and manly. In the light of present knowledge, the South knows that he spoke the truth, and one ought not to criticise a man for speaking the truth, especially if he be an instructor in an institution of learning, which ought at all times to be a leader of truth.

Professor Hedrick's statement was made in a spirit of fairness, and with far less temper than either the editor or "An Alumnus" had shown. Owning readily that he was the man aimed at in the *Standard*, he avowed with frankness that he preferred Fremont for President, and gave two reasons—(1) because he liked the man, and (2) because Fremont was on the right side of the slavery question. Discussing the latter reason, he branched out into an argument against slavery, perhaps the only anti-slavery argument ever admitted to the columns of the *Standard*. This feature made five-sixths of his article. He cited the views of Washington, Jefferson, Henry, Madison and Randolph on slavery. The works of these statesmen were much read in the library of the university. He said that in the western part of the State popular sentiment was against slavery, and that a large number of people had gone from there to the West. He made the point that the continual taking away of slaves for the far South cut off a great deal of the labor of the State that ought to be left to develop it. He declared that he had nothing to do with the politics of the students, adding: "They would not have known my own predilections in the present contest had not one of the number asked me which candidate I preferred." Of "An Alumnus" he said: "I shall not attempt to abridge his liberty in the least, but my own opinion I will have, whether he is willing to grant me that right of every freeman or not. I believe I have had quite as good an opportunity as he has to form an opinion on the question now to be settled. And when 'Alumnus' talks of 'driving me out' for sentiments

once held by [Washington and Jefferson] I cannot help thinking that he is becoming rather fanatical." He closed by saying: "I do not claim infallibility for my opinions. Wiser and better men than I have been mistaken. But holding, as I do, the doctrines once advocated by Washington and Jefferson, I think I should be met by arguments, and not by denunciation."

Having tormented its victim until he had forced him into a position of public condemnation, the editor of the *Standard* now proceeded to destroy him in the most systematic manner. In an editorial in the same issue with Professor Hedrick's defence it was declared that it could not be expected of " 'An Alumnus' or any other citizen of this State to argue with a black Republican." The editor repeated that a man who "even inclines to Fremont and black Republicanism" is not fit to be an instructor in the university. He added: "This is a matter, however, for the trustees of the university. We take it for granted that Professor Hedrick will be promptly removed."<sup>1</sup> A week later "A Trustee of the University" took up the matter in the same paper, saying: "This sentiment, avowed by one of the professors, will sink the institution, now grown to giant size and still increasing, unless the trustees forthwith expel that traitor to all Southern interests from the seat he now so unworthily fills. He should be ordered away as a foul stain on the escutcheon of the university to show to the country that the institution is a sanctuary from such vile pollution." A correspondent from Norfolk, Va., wrote also in the same strain.

Before these two letters were written the university faculty had considered the case. The defence had appeared on Saturday, October 4. The paper must have reached Chapel Hill not sooner than Saturday afternoon. At noon on Monday following the faculty was called together by

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<sup>1</sup> This editorial and Prof. Hedrick's defence were reprinted in the *New York Tribune* (semi-weekly), Oct. 17, 1856, and in the *New York Herald* (weekly), Oct. 18, 1856, and possibly elsewhere.

President Swain, all the members being present. In calling up the matter the president said: "In an institution sustained like this, by all denominations and parties, nothing should be permitted to be done calculated to disturb the harmonious intercourse of those who support and those who direct and govern it. And this is well known to have been the policy and practice during a long series of years."<sup>1</sup> The communication of President Swain was referred to a committee consisting of Professors Mitchell, Phillips and Hubbard. These reported as follows:

"Resolved:

"1. That the course pursued by Professor Hedrick, set forth in his publication in the *North Carolina Standard* of the 4th inst., is not warranted by our usages, and that the political opinions expressed are not those entertained by another member of this body.

"2. That while we feel bound to declare our sentiments freely upon this occasion, we entertain none other than feelings of personal kindness and respect for the subject of them, and sincerely regret the indiscretion into which he seems in this instance to have fallen."

After a brief discussion the resolutions were adopted, Messrs. Mitchell, Phillips, Fetter, Hubbard, Wheat, Phipp, C. Phillips, Brown, Pool, Lucas, Battle and Wetmore voting in the affirmative. Mr. Harris voted in the negative, "simply on the ground that the faculty is neither charged with black Republicanism nor likely to be suspected of it." He considered the whole affair as personal to Professor Hedrick. The students of the university expressed their sentiments by assembling on the campus as soon as the *Standard* containing the defence was received, and by burning the professor in effigy to the tolling of the bell.

On October 11, the executive committee of the board of trustees of the university met in Raleigh, Governor Bragg presiding, the sole purpose being, apparently, to dispose of

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<sup>1</sup> *North Carolina Standard*, Oct. 15, 1856.



this matter. From the minutes of the meeting I take the following:

"The president laid before the committee a political essay by Professor Hedrick, published in the *North Carolina Standard* of the 4th inst., together with sundry letters and papers relating thereto. Whereupon,

"Resolved, That the executive committee has seen, with great regret, the publication of Professor Hedrick in the *Standard* of the 4th inst., because it violates the established usage of the university, which forbids any professor to become an agitator in the exciting politics of the day, and is well calculated to injure the prosperity and usefulness of the institution.

"Resolved, That the prompt action of the faculty of the university on the 6th inst. meets with the cordial approbation of this committee.

"Resolved, That in the opinion of the committee, Mr. Hedrick has greatly if not entirely destroyed his power to be of further benefit to the university in the office which he now fills."

These resolutions were passed unanimously.

While the specific words were not used, this was in reality a dismissal. The next issue of the *Standard* announced, "with much gratification," the removal of Professor Hedrick. Referring to his probable course in the future, the paper further said: "If the Abolitionists should take him up the history of his conduct will follow him, and they will know, as he will feel, that they have received into their bosom a dangerous but congenial and ungrateful thing." This was a bitter thrust at a defeated antagonist. It is worth noting, because it says not one syllable about the offence of writing a political letter. The *Standard* a week later took up the matter again, and laid down its general doctrine as follows: "We say now, after due consideration, but with no purpose to make any special application of the remark, that no man who is avowedly for John C. Fremont for President ought to be allowed to breathe the air or tread the soil of North Carolina."



The cause assigned for the dismissal of Professor Hedrick became afterwards a matter of dispute. The *Wilmington Commercial* said at the time, in reference to the action of the executive committee: "It was not extra-judicial, as some persons suppose. Some years ago, on account of the introduction of certain political influences into the university, the trustees established a standing rule that neither professors nor scholars should engage in political conflicts. It was under this rule that Mr. Hedrick was dismissed, in consequence of his perseverance in wrong-doing, after being duly admonished that he was violating a law of the institution. The wisdom of this regulation will be quite apparent to every reflecting mind."<sup>1</sup> As to when Professor Hedrick had been "duly admonished," or in what sense he had been guilty of "perseverance in wrong-doing," does not appear from any evidence obtainable. On the contrary, Mr. Helper says that Professor Hedrick said time and time again that he never once tried to convert a student to his views. The above utterance does not seem to have been seen by Professor Hedrick until his return to the State in the following January. Then he sent the *Wilmington Commercial* a complete statement, which is worthy of extensive quotation. He said, after quoting the charge above mentioned:

"Now all this about the trustees having established any such a rule as the one referred to above is a pure fabrication. No such rule exists, and, of course, I could not violate it or be 'duly admonished' in regard to it. But you say I persevered in wrong-doing after I was duly admonished that I was violating a law of the institution. This is utterly false. I was assailed in two different issues of the *Standard*. I was charged with being a dangerous member of the community, and the editor called upon the mob to drive me from the State as an outlaw. Under these circumstances, I wrote my defence, declaring that I held no opinions inimical to the peace and welfare of the State, that in oppos-

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<sup>1</sup> Reprinted in the *Hillsboro Recorder*, Nov. 12, 1856.

ing the extension of slavery I was but holding the doctrines of the best and greatest of Southern men that have lived. The publication of this defence is the sum and substance of my offending. The editor of the *Standard* said, without waiting for the action of the committee, that he took it for granted that I would be removed. Several of the trustees, since reading my defence and the assaults of the *Standard*, have assured me that I acted just as a high-minded and honorable man should have acted under the circumstances.

"The trustees have never been able to assign any reason for my dismissal, except that Holden and the mobocracy required it, and Holden and the mobocracy must be obeyed or the stars might fall, or some other equally great calamity happen to the State.

"But some will say that I violated a usage of the faculty in defending myself against the attack of the *Standard*. That is as false as the charge of violating a law of the institution. It is true the faculty have always refrained from taking any prominent part in the politics of the day. But they have always expressed their party preferences as freely as other citizens, who do not make a trade of politics, and when necessary have resorted to the press to give publicity to their opinions on this same vexed slavery question. The same 'usage' exists in regard to the judges. But during the late contest Judge Saunders, before I wrote my 'defence,' addressed a letter to his political friends in Baltimore, which was designed to influence the election, and it was largely circulated by the party presses in the State. No one, however, thought of dismissing Judge Saunders for his breach of 'usage.' And as he was one of the executive committee of the board of trustees, of course he had too much regard for consistency to vote for dismissing me for doing no more than he did himself.

"The following sentence from an editorial in the *Standard* explains the whole matter. The editor says: 'Our object was to rid the State and the university of an avowed Fremont man, and we have succeeded.' This explains the ac-

tion of the board, and there is no need to resort to 'rules' which never existed, or to usages which have nothing to do with the matter.

"The act establishing the university says that the board of trustees may remove a professor for misbehavior, inability or neglect of duty, and they shall have power to make all such laws and regulations for the government of the university and preservation of order and good morals therein, as are usually made in such seminaries, and as to them may appear necessary; provided, the same are not contrary to the inalienable liberty of a citizen and the laws of a State.<sup>1</sup>

"If it is a misbehavior to defend oneself against the denunciations of a fanatical party paper, then the trustees have dismissed me with a show of reason. The 'inalienable liberty of a citizen' is little worth if it be to cost one the labor of years to claim a voice in the election of a President, and when accused of holding opinions dangerous to the community, not to be permitted to say to the slanderer that the charge is false. My defence has not been reprinted in a single paper in the State; and yet, in order to drive me from my home and kindred, it has everywhere been published that I was an Abolitionist and the mob excited against me. I have asked that my letter be published to speak for itself and me, but in every instance the editors have refused me even that, whilst at the same time many have not hesitated to circulate every paragraph that could work against me.

"The papers which have in any way given currency to the notice that I was dismissed for violating any law of the university or the State, will, I hope, do me the justice to publish this note."

To this plain argument the *Commercial* of February 5, 1857, the same issue in which the above communication appeared, replied editorially:

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<sup>1</sup> See Laws of 1789, Chap. 20, section 8.

"In another column is a communication from Professor Hedrick, containing animadversions on the course of Mr. Holden, of the *Standard*, and the party to which he belongs. In regard to the 'established rule,' we do not recollect now who was our authority for it, but we well remember that we considered it reliable, certainly as much so as any statement made by Mr. Hedrick can be.

"Mr. Hedrick is hardly entitled to the courtesy we show him, for, by using the term 'Holden and Mobocracy,' he offers an insult to the great and powerful and patriotic party with which we have the honor to act. However, we let that pass, for our readers will have a great opportunity of observing the great advantages of collegiate attainments and station in the charming style in which the *professor* turns up the 'pure Saxon.' Young man, too, we believe. Quite smart for his age, certainly. Very bad, indeed, that the youth of our university must lose the benefits of his fine examples and specimens of Addisonian purity and style of elegance and diction. Was he somewhat in a passion when he wrote the words *false, falsehood*, etc? Well! We wonder! His language being so strong, so argumentative, so convincing, we dare say his gesticulations would be magnificent. We trust that the faculty will permit Mr. Hedrick to recite the communication we publish to the scholars, so that they may lose nothing of its beauties, either as regards its sentiments or the lessons that may be derived from action. Action is everything according to the notion of Demosthenes—'action, action, action,' was his motto. Let somebody see Mr. Hedrick act the thing."

Here are two articles, each of which may be left to speak for the merits of the side it advocates. On the one side we have a clear, strong argument, unanswerable, a sense of outrage, a protest against passion; on the other we have an avoidance of argument in the beginning, a ruthless unwillingness to concede a desire for truth to the other side, an appeal to passion, and a supercilious tone of superiority. It was a great misfortune for the South that the



defence of slavery should have committed it so decidedly to habits of denunciation and intolerance. It was the embittering of tempers naturally sweet, to which only years can bring back their gentleness.

On October 21, 1856, there was an educational convention in Salisbury, which, it will be remembered, was near Professor Hedrick's boyhood home. Before the recent trouble Professor Hedrick had been appointed a delegate to this convention, and now he decided to attend. One object in going was to learn what was the opinion of the people in that part of the State in regard to his case. In Salisbury he stopped at the house of Rev. Jesse Rankin, who had prepared him for college, and who was then conducting a girls' boarding school in that place. In the evening he went to the Presbyterian Church, where the sessions of the convention were held. He took a seat in the gallery, and seeing his father in another part of the gallery, he went over and sat beside him. This helped to attract attention to his presence. It was soon generally known that he was in the building. A crowd began to collect outside, shouting his name and in various ways evincing an ugly disposition. Their object, said the town paper, was to disgrace him and to force him to leave the place. This made him the object of the gaze of a large part of the audience. Some called him "Fremont" in derision. The children, misunderstanding the allusion, thought he was Fremont, and looked on with wonder and dread. One of them remarked in his hearing that he "was a dreadful little man to be President." Professor Hedrick was embarrassed, and drew his cloak around his face. When the convention adjourned he started out, accompanied by his father and his former teacher. Directly facing the door he saw an effigy of himself, gotten up by some of the young men, and by the side of it a transparency, on which were the words: "Hedrick, leave, or take tar and feathers!" This effigy was burned in the presence of himself and nearly every other member of the convention. The mob gave three groans for the object of their displeasure,



who, for his part, accompanied by his father and Mr. Rankin, retired to his lodgings. The passion of the mob was now aroused. They could not forbear to torture as long as their victim was within reach. Between 200 and 300 marched to the boarding school, where they serenaded the hated Abolitionist in true "Calathumpian style," as the *Raleigh Standard* pronounced it. They shouted, hissed, gave three groans and demanded that he leave town or take an application of "the juice of the pine and the hair of the goose." They even threatened to enter the house and do him personal violence. In the words of the local paper, they "proceeded in a most riotous and reprehensive manner to compel Hedrick to leave town." Finally the mob was quieted by several prominent citizens, who do not seem, before this, to have exerted themselves in the matter. The crowd went to their homes, Professor Hedrick agreeing to leave before daylight. Commenting on this occurrence, the *Salisbury Banner* said: "We regret this unfortunate occurrence as well as every lover of quiet, yet it was a certain demonstration that black Republicans and their infamous principles cannot and will not be tolerated in this goodly land of ours. We admire the spirit, but regret the necessity of the manner in which the condemnation was made."<sup>1</sup>

Early next morning the young man, hunted from the scenes of his boyhood like a criminal, took his way to the house of his brother, who lived near the railroad station of Lexington. To the latter place he at length went with his father to take the train for his home in Chapel Hill. Fearing trouble, the two separated. The precaution was well taken. An excited crowd had gathered, and suspecting that Professor Hedrick might be on board, they searched the cars for him. By

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<sup>1</sup> The story as given in *The Salisbury Republican Banner*, Oct 28, 1856, was reprinted in the *Boston Traveller*, Nov. 6, 1856. A slightly varying account is that of the *Raleigh Standard*, Nov. 6, 1856. From these two narratives as well as from facts furnished by Prof. Hedrick's family the above has been reproduced.

getting on the train at the last moment he was able to elude his pursuers, and to reach his home in safety. A few days later he left the State for the North. It was reported at the time that a meeting to express approval of the action of the university authorities was planned in Hillsborough, but that its promoters gave it up for fear that it might be turned against them and made to express approval of Professor Hedrick.

In January, 1857, the fugitive returned to the State. The excitement of the campaign had subsided, and there was no further political gain in persecuting him. He was allowed to come and go in peace. It was at this time that he wrote his statement for the *Wilmington Commercial*. It was also at this time that the following, which I find among his papers, was written :

UNIVERSITY OF NORTH CAROLINA,

CHAPEL HILL, N. C., February 2, 1857.

The proceedings of the faculty in the foregoing case were dictated by the sense of duty ; and subsequent reflection has produced no change of opinion as to the course pursued. We regret most sincerely that a departure from the usages of the institution rendered [necessary] any action on our part.

We repeat now, what we said then, that we entertain for Professor Hedrick none other than feelings of kindness and respect ; and we cheerfully add our decided testimony to his high natural abilities and scholarly attainments. We believe that in these respects, especially as a mathematician and analytical chemist, he has few superiors of his age.

(Signed), D. L. SWAIN, Pres.,

E. MITCHELL, Chem. Prof.,

F. M. HUBBARD, Lat. Prof.,

J. T. WHEAT, Logic and Rhet. Prof.

What could have been the occasion for this paper I am unable to learn. It is possible that friends of Professor

Hedrick had asked for a modification of the former action of the faculty. It cannot have been meant for a letter of recommendation, for five days later these same professors, with one other, signed such a letter in regular form, in which they spoke most flatteringly of their former colleague as a man and as a scholar.

From North Carolina Professor Hedrick went to New York. Here he was employed as a clerk in the Mayor's office, at the same time lecturing and teaching in the city. In 1861 he gave up this work to become a principal examiner in the United States Patent Office in the Department of Chemistry and Metallurgy, where he remained till his death. From 1872 till 1876 he was also Professor of Chemistry and Toxicology in the University of Georgetown. During the war he relieved many distressed fugitives and prisoners from North Carolina. This was a work in which his gentle nature took great delight. After the war he was an earnest worker for the restoration of civil order in his native State. He died at his residence in Washington, September 2, 1886.

Of his scientific services in the Patent Office this is not the place to speak at length. His long period of service indicates that his work was entirely satisfactory. An associate in the Patent Office, in an article in *The American Inventor* (Cincinnati, Ohio,) September, 1886, speaks of this part of his career. From this article a few facts will be taken. When he came to take charge of his work, Professor Hedrick saw that but few patents were issued, and the business of the officials seems to have been thought to be to "head off inventors and kill inventions. \* \* \* There was no sort of sympathy with the inventors, and but small desire to aid them in perfecting and obtaining the patents." This he thought wrong. He adopted a more liberal policy in his own department. His associates were shocked. They thought him a radical. But the commissioner, Mr. Hollo-way, was broad-minded and fair, and Professor Hedrick's "anti-slavery record was so pronounced that no scorn or ill-

will had any adverse influence on him." He held his position, and in the course of time the whole office came to espouse his policy in reference to inventions. It was due chiefly to this movement which he set going that the Patent Office began its great development immediately after the war. Many of the patents that he granted were hotly contested, but the courts almost always sustained his judgment. In the course of time he was generally recognized as one of the most efficient, if, indeed, not the most efficient, of all the men in the office in which he served.

#### DANIEL REAVES GOODLOE.

Daniel Reaves Goodloe was born in Louisburg, N. C., May 28, 1814. His ancestors came from Virginia to North Carolina. His father read medicine, but never practised it. He was a school teacher, although, from his early leaning toward medicine, he continued to be called "Dr. Goodloe." Not far back in the family there was a fortunate combination of English, Welsh, Danish and Huguenot blood. Mr. Goodloe's mother was of a Welsh family named Jones. In neither origin nor association was he connected with the class of large slaveholders. In his youth he attended the "old field" schools of the place, where he acquired the merest rudiments of knowledge. Later on he entered the Louisburg Academy, which was supported by the prominent families of the neighborhood, and had the reputation of being among the best schools of its kind in the State. His progress here was not great, however. When he left the school he could boast of no learning beyond the English branches, except a "smattering of Latin." Later in life he went to Tennessee, and there, at Mt. Pleasant, Maury county, studied mathematics, with good results, under a Harvard graduate named Blake. When still a boy he went to Oxford, N. C., and entered a printing establishment there, his purpose being to learn the printer's trade. This period of his life he recognizes as of great formative value in his

mental development. Typesetting taught him, as he himself says, "to analyze sentences and to discard, in my mind, superfluous and inappropriate words. Perhaps the slow process of putting the types together was favorable to this result. At any rate, I have always regarded those years thus spent as not the least advantageous to me in the matter of mental training."

After two years and one-half of apprenticeship, Mr. Goodloe, then just of age, tried a newspaper venture of his own. He began in Oxford, N. C., the publication of *The Examiner*. The venture was ill-timed, and soon ended in disaster. The editor, encumbered with debt and disgusted with newspapers, went, after some wanderings in Tennessee, back to Louisburg to read law. After a year's study he was licensed to practise in the county courts, and a year later, in January, 1842, secured permission to practise in all State courts. He settled in Louisburg and waited for cases. For nearly two years he waited, but with little success. He had no aptitude for public speaking, and did not succeed in acquiring the facility in argument which is necessary in the general practice of country courts. Mr. Priestly H. Mangum, a brother of Senator Mangum, and a lawyer of prominence, saw this deficiency in the young man, and advised him that it might be overcome by running for some political office. The necessity of defending publicly his position, thought Mr. Mangum, would develop fluency of speech. Franklin county, of which Louisburg is the county seat, was at that time overwhelmingly Whig. Mr. Goodloe was a Whig. His most intimate friends were leading Whigs, and they offered to put him in nomination. "But," says Mr. Goodloe, "I had a thorn in the flesh, which restrained me. I had a profound conviction of the evils of slavery, moral and economical. The agitation had not then reached to fever heat, but it was rising, and it began to be seen that the interest of slavery underlay and touched every other question. I should have been called upon to define my views on the subject, which I could not have done with-



out injury to the Whig cause, to my friends, and to myself." The proffered nomination was accordingly declined. This was a very characteristic action of the man. One of the most prominent traits revealed in his career is his honesty.

After a year of idleness in Louisburg Mr. Goodloe went to Tennessee, hoping to find fortune more favorable there. This was not his first trip to that State. In 1836, just after the failure of *The Examiner*, he turned to the West. In 1836 he volunteered in Maury county, Tennessee, to go to fight the Indians. The forces were intended to fight the Creeks, in Alabama; but before the command to which he belonged could rendezvous at Fayetteville, Tenn., the Creeks had surrendered. The volunteers then agreed to go to Florida, against the Seminoles. They went, serving six months as mounted volunteers. They had several skirmishes with the Indians. They were at length mustered out of service at New Orleans. For this service Mr. Goodloe now receives a "service pension." On his second trip to Tennessee he found that there was as little of an opening there for a man who was both a printer and a lawyer as he had formerly found for a man who was only a printer. He accordingly decided to go to Washington City. There he arrived, with no money and few friends, January 22, 1844. At length Senator Mangum came to his assistance and secured him employment as assistant editor of a daily paper called *The Whig Standard*, of which Mr. Nathan Sargeant, a journalist of repute, was the editor-in-chief. The *Standard* was not a financial success, and in a few weeks Mr. Sargeant withdrew, leaving the entire management to his newly-acquired assistant. During the hotly-waged campaign of 1844 Mr. Goodloe had control of the paper, but he was not able to fix it so deeply in the affections of his party that it would supply more than a campaign want. On the defeat of Mr. Clay it suspended. He then edited the *Georgetown Advocate* for a short while, and finally took a small school. He at length secured employment of a more permanent nature when he became assistant editor of the

*National Era*, a prominent anti-slavery weekly, published in Washington, and edited by Dr. Gamaliel Bailey. This paper had been founded in 1847 in order to advocate the principles of the Liberty Party. It had, however, says Mr. Goodloe, always remained free from party domination. On account of the illness and subsequent death of Dr. Bailey, Mr. Goodloe became at length the editor-in-chief. He had now reached a position in which he was thoroughly identified with the anti-slavery cause. It is now time that we see how he came to hold such views.

In August, 1831, there occurred in Northampton county, Virginia, the well-known Nat Turner Rebellion. The whole slaveholding South was highly alarmed. In Virginia the occurrence divided public opinion. Many people thought it proved one of the dangers of slavery and advocated the enactment of such laws as would look toward the gradual extinction of slavery. This proposition was most warmly supported in the western counties of Virginia. In January of the succeeding winter the legislature took up the matter and had a long debate on the question of gradual emancipation. The speeches made on this occasion were both exhaustive and able. Slavery was handled with a great deal more freedom than it met with again in the South until it felt the rough force of Grant's army at Appomattox. The ablest men in the State took part in it, and they were mostly on the side of emancipation. Among this number was one worthy of special mention, viz., Mr. Charles J. Faulkner, now of West Virginia. He was then a young man, and spoke ably and convincingly for freedom. The two leading newspapers of Richmond, the *Enquirer* and the *Whig*, organs, respectively, of the Democratic and Whig parties, were both for emancipation. Mr. Goodloe was then a journeyman printer in Oxford, N. C. These two papers came regularly to the office as exchanges. They were seized and devoured by the boy. In this way the arguments of the anti-slavery side were deeply impressed on his mind. In fact, the statesmen of Virginia who were opposed to eman-

cipation did not attempt to defend slavery. They merely maintained that emancipation was impracticable. The planters of the eastern part of the State, where slavery was strongest, had a more effective measure than argument to use against the proposition. They saw that the life of slavery was threatened. They affected to believe that the debates would stir up the slaves to further resistance. They called indignation meetings, in which it was declared that the legislative debates were incendiary. The clamor they raised frightened some of the more timid members of the legislature, with the result that further discussion of the matter was dropped, not, however, before the friends of freedom had in one of the ballots come within one vote of winning the fight. "From that time," writes Mr. Goodloe, "dates the intense hostility in all the South to the idea of emancipation in any form, whether immediate or gradual. From that time the legislation of the Southern States took on a harshness never before practised. Negroes were forbidden to learn to read, and to teach them to read was punishable by fine and imprisonment. The statutes of every Southern State bear evidence to this effect."

The Virginia debates were read with interest by many North Carolinians. Some of the State newspapers took the side of emancipation. This was notably true of the *Greensborough Patriot*, then edited by William Swaim. Here was a man of strong talents and much ability in writing. He wrote a pamphlet about this time, which was an attack on slavery. Mr. Goodloe says that it would have done credit to any writer. It was reprinted by William Goodell, of New York, but a search in many places has failed to bring it to light.

While at Louisburg, a lawyer without clients, Mr. Goodloe's mind continued to dwell on the moral and economic evils of slavery. It seemed to him an impossibility that an institution manifestly founded on an injustice to a whole race could be economically wise or generally salutary. Says he: "The objections to slavery pointed out by Northern

writers, that free labor was more efficient, and that a free man would do more work than a slave, failed to satisfy me. I was aware that nothing hindered Southern capitalists and Southern planters from employing free labor. But they gave the preference to slave labor as a matter of convenience and of profit. Slaves, where the institution was tolerated, were preferred to any other form of property. Lands in all the South had little market value. They rarely increased in value after the country became settled and occupied. Personal property other than slaves had no salable value, but there was always a market for slaves, either at home in the old States, or in the Southwest." Still it was impossible not to see that the slave States were far behind the free States in general development. Mr. Goodloe thought much over this disparity in the industrial, educational, literary and social progress of the two sections. After much reflection he settled the question to his satisfaction. One day in 1841, while driving from Louisburg to the neighboring town of Franklinton, the conclusion came to him "that capital invested in slaves is unproductive, that it only serves to appropriate the wages of the laborer." This he proceeded to illustrate as follows: Two farmers live on opposite sides of the Ohio river, the one in Ohio, the other in Kentucky. Each has 100 acres of equally fertile land, and an equal capital in tools and stock. But the Kentuckian must own ten slaves to work his land at an investment cost of \$10,000. The two have equal amounts of money invested in land, and they raise equal amounts of produce. Now, when it comes to calculating the net returns of the year, the Kentuckian will have to make more money clear in order to receive an income on the capital invested in slaves. Hence it takes more capital to conduct farming operations in Kentucky than in Ohio. "It is true," adds Mr. Goodloe, "that the Kentuckian receives a larger proportion of the crop than the Ohio man; but he receives it as the wages of the ten slaves, who receive nothing. But Kentucky, the community in which the slaveholder resides,



is enriched to no greater extent than Ohio, where the farmer must divide profits with the laborer." The same would be true of slaves worked in a factory. "It may be said that he may hire the slaves. No matter; they still are slaves involving an unnecessary investment of capital. The State in which the factory is situated is the loser of actual capital, whether the employer of the slaves, as hired men, loses or not. The South, when the Civil War came on, held near 4,000,000 of slaves, which they valued at an average of nearly \$750 each, and the aggregate value was nearly \$3,000,000,000. This abstraction of so vast a sum from active use furnishes another explanation of the dearth of commerce, manufactures and all the conveniences of life from the South. The abolition of slavery destroyed no property. It only changed or transferred titles."

In regard to individual wealth, this view was wrong. If a slave-owner receives wages for slave labor that is a return for slave capital, and to that extent the capital is not unproductive to him. At the same time the value of his slave has another element of gain in the offspring of the slave. In regard to social wealth, Mr. Goodloe's view seems mainly correct, if it be considered from the Northern standpoint. The North said that the slave was a person, a member of society. Consequently his own property was decreased as much as his master's was increased, and the wealth of the community was not affected. The South said, however, that the slave was not a person, not a member of society, but a thing. His property was not decreased by his not owning himself, because he was nothing. His master's property in him was, accordingly, a loss to the property of no member of society. On the contrary, it was a gain to one who was certainly a member of society, and for that reason a gain to society itself. Happily, we are all now agreed that the slave was a person in the eyes of all humane feelings, and that his rights were defeated by his enslavement. The theory, then, that capital invested in slaves is unproductive as social wealth is a good theory. The fur-



ther view that emancipation destroyed no property needs, however, some modification. Temporarily, emancipation did destroy property. Value depends upon usefulness. One of the conditions of usefulness is efficiency. When one recalls the disorganized condition of labor in the South just after the war, he will see that although the labor forces were outwardly undiminished, they were still not so efficient as they had been, because they lacked sufficient direction. This effect has been temporary. How long it has continued, or will continue, depends upon the negro's acquisition of the habit of working without compulsion, a process in which, it ought to be said, his progress seems satisfactory. An opposing force to this fall in the productiveness of negro labor has been an increased productiveness of white labor under conditions of freedom. What is the exact resultant of all these forces it would be interesting to discover. On the whole, it seems in favor of the new régime.

Mr. Goodloe's views were embodied in a pamphlet, and when he went to Washington he laid it before Mr. John Quincy Adams at his house, nearly opposite the Ebbitt Hotel. Mr. Adams examined it carefully and praised it highly. He asked the author if he proposed to publish it. The answer was that he was unable to do so. Mr. Adams then suggested a newspaper publication, and said that there was a young man named Greeley, who was publishing an anti-slavery Whig newspaper in New York, but that he, Mr. Adams, was not acquainted with him. On consideration he advised that the article be sent to Mr. Charles King, a son of Rufus King, then publishing the *New York American*. This course was followed, and the article appeared in the *American* at the end of March, 1844. Two years later the author printed 500 copies of the article in pamphlet form. Later in life, while reading Mill's Political Economy, he was struck with the statement that mortgages are no part of natural wealth. Reasoning by analogy, he thought Mill must have his idea of slavery; but further investigation showed that the arguments used in reference to mortgages

had not been applied, as might have been done, in reference to slavery. Mr. Goodloe then sent his pamphlet to the distinguished economist and received a letter in reply, in which Mr. Mill said that Mr. Goodloe was clearly right, and that he would embody the idea advanced in the pamphlet in his next edition of the *Political Economy*, but he did not publish another edition.

The *National Era* in its earliest days drew its patronage from the whole country, wherever there was anti-slavery sentiment. It was one of the few papers that were advocating that cause. With Mr. Lincoln's election a large number of papers appeared as supporters of anti-slavery principles. Against these papers the *Era* could not compete. Local Abolitionists turned to support their home enterprises, and the older journal, after having fought the battle through to victory, died as a result of the success of the cause it had advocated. Left out of employment by this collapse, Mr. Goodloe became Washington correspondent of the *New York Times*, then strongly Republican. On April 16, 1862, President Lincoln signed Senator Wilson's bill to abolish slavery in the District of Columbia. A sum of money not exceeding \$1,000,000 was appropriated to pay for the liberated slaves, and it was provided that the average price should not be more than \$300 each. To carry out this law a committee consisting of Messrs. D. R. Goodloe, chairman; Horatio King and J. M. Broadhead, were appointed to value the slaves and to order payment for the same. The committee sat for nearly nine months, took evidence, heard arguments, examined the slaves themselves with the aid of Mr. B. M. Campbell, an expert slave dealer from Baltimore, and awarded such sums under the law as they thought just. In this way 3000 slaves were liberated, at a cost to the government of \$900,000, in round numbers.<sup>1</sup>

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<sup>1</sup> See Ingle: *The Negro in the District of Columbia*, Johns Hopkins University Studies, 11th Series, pp. 105-8. Some further details have been supplied from Mr. Goodloe's own statement.

For a year or two after this Mr. Goodloe was engaged in editorial work on the *Washington Chronicle*. In September, 1865, he was appointed United States Marshal in North Carolina. This position he held until the inauguration of President Grant, when he was removed for party reasons. He remained in North Carolina for some years, but finally returned to Washington city, where he occupied himself at first with the compilation of a book, which was later published under the title of "The Birth of the Republic." He afterwards wrote a history of the reconstruction period, but being unable to print it himself, he sold the manuscript to a prominent politician. That gentleman incorporated it in a book of memoirs, which he was about to issue to cover his experience as a politician, and he used Mr. Goodloe's work without giving him credit. Having purchased the work, he doubtless felt relieved from any obligation to acknowledge its connection with another. Later on Mr. Goodloe compiled a synopsis of the debates of Congress from the earliest times to the present day, but the work has not been published. He remained in Washington writing for the newspapers and investigating many features of our national history. In the winter of 1894-5 he published in the *Raleigh (N. C.) News and Observer* a series of articles on the reconstruction frauds in North Carolina, which is undoubtedly the best thing written on the subject. In the spring of 1896 he returned to Raleigh, N. C., where he still resides.<sup>1</sup>

#### ELI WASHINGTON CARUTHERS.

Few people, perhaps, who know Dr. Caruthers as an historian realize that he wrote a book on slavery. He was, as most of those who know of him will understand, pastor of Presbyterian churches around Greensboro, N. C., for over forty years. He was a man of conviction and was known to be opposed to slavery; but he made no display of his

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<sup>1</sup> The facts for the above sketch are derived, unless otherwise stated, from data furnished by Mr. Goodloe himself.

views. Finally, one Sunday morning in July, 1861, at his church at Alamance, he prayed that the young men of his congregation who were in the army "might be blessed of the Lord and returned in safety though engaged in a bad cause." The next day the officials of the church informed him that they needed him no longer. It was probably after this that he wrote his work on "American Slavery and the Immediate Duty of Slaveholders." This book was not published, and until recently few knew of its existence. In February, 1898, it was discovered by Dr. Dred Peacock and placed in the Ethel Carr Peacock Library at Greensboro Female College.

Two prefaces were written; one when the manuscript was prepared, and one in 1865, when the author made some changes in it. In the second preface he says:

"The following work would have been published years ago, but for the last fifteen years its publication or circulation would not have been tolerated in any one of the Southern States. It was written at the request of some valued friends who had expressed the wish to see my views in a more permanent form than the incidental or transient utterances of conversation, without any design of ever giving it to the public in its present form."

Although slavery had then been abolished, it was decided to publish, because the people were thought to be in a better mood to understand and to do justice to anti-slavery arguments, and because "we have the authority of the Bible for holding up the calamitous events to the wicked actors in them as warnings." In the first preface is this statement: "There are some hard things in it [the book], and if there were not it could do no good; for an evil of such an extent, enormity, and long standing cannot be demolished or removed by a little smooth talk. The whole truth must be told. . . . The language is not abusive, and was certainly not intended to be so; for neither my disposition nor my principles allow me to employ harsh and vituperative language."



Dr. Caruthers was born in Rowan county, N. C., October 26, 1793. He graduated from Princeton in 1817. It was, perhaps, while there that he shaped his views on slavery. Here he met Mr. G. M. Stroud, author of "The Laws Relating to Slavery." From this work he took many of his facts, and it is possible that Stroud had a certain formative influence on the views of his friend.

A text was placed at the beginning of the book: "Let my people go that they may serve me" (Exodus, 10: 8). The author stated that he should treat African slavery as "viewed in connection with the covenant of redemption." Plainly, he contended that the negroes should be free so that they might become Christians, and that they could not become such in slavery. How he developed this thought is gathered from the following abridgment of the Table of Contents:

"I. The Claim—*My People*.

"1. On creation and preservation. Natural differences among men furnish no justification of slavery. The deep and long continued degradation of the Africans in their own land no reason why they should be enslaved. The alleged antiquity of slavery no justification of the practice. The orderings of Providence furnish no justification of slavery.

"2. The Lord's Claim on the Africans and all other races and portions of mankind is founded on Redemption. The opinions of learned and good men in favor of slavery is no proof that it is right. Slavery originated in avarice, falsehood, and cruelty.

"II. The Demand; 'Let my people go': The Demand enforced by Providence; Human beings cannot be held as property. . . . .

"III. Reason of the demand, 'That they may serve me.' Their powers can never be developed while they are in a condition of slavery. According to the present laws and usages of the land slaves cannot make that entire consecration of themselves to the Lord which the Gospel requires and to which the renewed nature prompts them. Under



existing laws and in the present state of society slaves cannot have that equality of rights and privileges which is in the New Testament accorded to all true believers."

The purpose of the book, as he said, was "to contrast the unjust, unchristian, inhuman laws of the South relating to slavery with the teachings of the Bible and the original instincts of Nature." He was impelled to write the book because he had never seen a treatment of the slavery question from this standpoint. Whatever other books may have been written on slavery, it is certain that none gave a more positive note of opposition than this. On the separation of families he was very hard. "Many a sad tragedy of broken hearts and ruined homes," said he, "has been the result [of separation]. I have known some instances in which they have been permitted to live on in great harmony and affection to an advanced age; but such instances, so far as my observations have gone, have been, 'like angels' visits, few and far between.' Generally, in a few years at most, they have been separated—sold off under the hammer like other stock and borne away to a returnless distance."

It was, however, against the law forbidding slaves to be taught to read and write that he reserved his strongest anathemas. When this law was passed, he charged, the only argument made for it was that if slaves could read they would read the Declaration of Independence, the speeches in Congress, and the newspapers, and so become acquainted with their rights, discontented with slavery, and less profitable to their masters. "It seems strange," he continued, "that a Protestant, a Christian people,—nominally such, at least,—are not ashamed to use such an argument." In another place he burst forth: "How dare you by your impious enactments doom millions of your fellow-beings to such gross and perpetual ignorance? How dare you say that neither they nor their unborn generations shall ever be taught to read the glorious revelation that God has given and designed for them as much as for you?" Still later, he returns to the subject and says: "When do you think that

you will have made so much money by their labor that you will be willing to let them go? . . . If you believe, as you pretend, that the Lord's design in permitting them to be brought here was that they might be converted and prepared to carry the Gospel back to Africa, repeal your laws forbidding them to be taught; give them the time, means, and motives necessary to improve them and send them back full handed and well instructed to the land of their fathers." It is doubtful if a stronger or clearer anti-slavery argument was ever made on this continent.

This is enough about a book that was never printed. Its author was not, strictly speaking, an anti-slavery leader. He did not stand out as a teacher of opposition to slavery. He was not a leader. But he wrote one of the strongest arraignments of slavery in the abstract that ever appeared. His book was a sermon expanded. Along with the manuscript I found a manuscript sermon on the same text (Exodus, 10: 8), showing whence came the book. This book was not given to remove slavery, but to cure the wound made by forcible emancipation. When the South writhed in bitterness under its hard fate, it would have been a good thing for its peace of mind if it could have been made to see that the extinction of slavery was for the best. Had Dr. Caruthers lived his attempt in this direction would, no doubt, have been delivered to the public. It would, perhaps, have failed immediately. Ultimately, it would have reached those for whom it was intended. Today most people in the South acquiesce in the conclusion that slavery was an evil. But there are few who understand why it was an evil. No better foundation for the study of present social conditions in the South can be had than a complete survey of the conditions of Southern slavery. For such a survey, Dr. Caruthers' work is of great value.

#### LUNSFORD LANE.

It is a fit thing that this series of sketches should close with the story of the career of a member of the enslaved race

itself. This story will illustrate many sides of the slavery question in the South. Here is the blight of slavery on white and black, the exceptionable negro, who, by admirable perseverance and endurance, struggles on to freedom, the mass of thoughtless and unambitious negroes in the background, the touch of human sympathy on the part of the better class of whites, and the maddened roar of the ignorant and infuriated larger class. How truly was this a picture of slavery and its surroundings.

Lunsford Lane<sup>1</sup> was a slave of Mr. Sherwood Haywood, a prominent citizen of Raleigh, N. C. His master was the owner of two plantations, one in Wake county, near the city of Raleigh, the other in Edgecomb county. Lunsford was born in the early part of the century, and grew to manhood before the beginning of the severer attitude toward the slaves which came after the Northampton insurrection of 1831. His parents, of pure African descent, had been kept

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<sup>1</sup> This sketch is based on the "Memoir of Lunsford Lane," by Rev. Wm. G. Hawkins (Boston, 1863). The narrative is not free from the extravagances of a zealous Abolitionist. In places conversations have been reproduced with a freedom worthy of the Greek historians, and at times the author has allowed his imagination to portray surroundings which are characteristically Southern, but which in this case did not exist. As for the main facts of the narrative, I have no reason to reject them. Information about the case is hard to obtain in Raleigh, but from an old resident I obtained a corroboration of the account of the mobbing of Lane as herein given. Still I have not found any mention of the occurrence in the Raleigh papers of that day. One of these papers was edited by Thomas Loring who was the Mayor before whom Lunsford was tried, yet it is silent. It is likely that the matter was not published for fear of the effect it would have when copied in Northern papers.

A letter from Mr. Hawkins says that the facts were obtained from Lunsford himself, and that on a visit to Raleigh after the war the "material facts outlined in the story" were confirmed by a number of colored people who had known, or were related to, Lunsford Lane. Mr. Hawkins closes thus: "He [Lane] impressed me as being a man of uncommon natural intelligence and truthfulness, and I have no doubt that the account of his life which I have given is substantially true."

J. S. B.

in the town for family service, and thus their offspring had opportunities beyond the other negroes. Lunsford early learned to read and write, a privilege that would not legally have been allowed him a few years later. Many men of political prominence visited at his master's house, and from waiting on these he acquired much general information. He also learned a great deal from the speeches of great politicians. He heard speeches from Calhoun, Preston, of South Carolina, Badger, Mangum, and many others of less note. He waited on La Fayette when he passed through Raleigh in 1824, and was greatly impressed by the distinguished Frenchman's devotion to liberty. Once he heard Dr. McPheeters, the Presbyterian minister in Raleigh, say: "It is impossible to enslave an intelligent people." This made an impression which he never forgot. His desire to gain his freedom grew daily, and all the spare money that he received as fees from his master's guests was put away toward that end.

In the hope of acquiring liberty there was not a little encouragement for him in the life of the negroes of the town. At that time a strict surveillance had not been established over the religious and social meetings of slaves. They accordingly often in their chance meetings discussed means of improving their condition. The natural inclination of the negro to speech-making helped in this process. The following illustration of this faculty will be of value here. The colored boys of the town had a custom of assembling every Sunday afternoon at a certain mineral spring in the suburbs of the place and discussing, in imitation of the whites, the issues of the day. Some of them, especially the slaves of prominent men, could repeat with great exactness speeches that they had heard during the week. The whites were often present at these meetings, and the master of a bright slave boy would feel a pride in the prowess of his negro and encourage him to improve. At last, however, they came to see that the effect of this was to turn the minds of the slaves toward freedom, and they forbade the meetings. In such conditions the boy Lunsford found himself placed.



His early savings for the purpose of buying his freedom had reached a considerable sum by the time the boy became a man. A part of this he lost through bad investments, and the balance he was forced to spend on his wife. As soon as he was grown he had married a slave of Mr. William Boylan, a most excellent citizen of Raleigh. Shortly afterwards Mr. Boylan had to sell this woman, but he gave her the privilege of selecting for her new master anyone who would buy her. Lunsford was a Baptist and his wife a Methodist. True to the instinct of the race, she decided the matter according to church affiliations. His wife concluded that she would be better off if she were owned by a member of her own church, and he prevailed upon Mr. Benjamin B. Smith, a wealthy Methodist, to purchase her and her two children, the price paid being \$560. Lunsford charged that Mr. Smith neglected to feed and clothe the woman properly, knowing that her husband, who was known to have some money, would not let her suffer. In this way he exhausted the balance of his early savings.

Lunsford had been taught by his father the secret of making a superior kind of smoking tobacco, and this the father and son now began to manufacture for the market. To have free opportunity for this he hired his time, paying for it from \$100 to \$120 a year. It was some time near this date that his master died. Mr. Haywood had been an indulgent master. He had assured Lunsford that he should be allowed to buy himself. Lunsford now found himself the property of his former master's widow, and he feared that she would not be willing to fulfill the promise. He says, however, that she valued the good opinion of her neighbors, and that they would expect the fulfilment of Mr. Haywood's promise. Stifling his doubts, he worked all the harder. The demand for his tobacco was growing. He enlarged his plant and made arrangements to sell the product in the neighboring towns of Fayetteville, Salisbury and Chapel Hill. At the end of about eight years he had saved



\$1000. With much anxiety he approached his mistress to propose the purchase of his liberty. Of this negotiation he says: "I casually asked her price, provided I should desire my freedom. She said she would be satisfied with \$1000. I then very frankly told her I greatly desired my freedom, and asked if she was ready to execute the deed, provided I could find some person whom I could trust by whom the purchase in my behalf could be made." A slave, it should be said, had no standing in law, and could not make a contract. Lunsford, therefore, had to get some trusted white man to buy and then emancipate him. He decided to entrust the affair to Mr. Smith, his wife's master. That gentleman, after making the purchase, applied to the courts for leave to emancipate Lane. Now by law slaves could be freed for meritorious services only. No such services could be shown in this case, and the application was refused. Mr. Smith, who was a merchant, then proposed that Lane should accompany him on his next trip to the North and have the freedom papers issued there. This was agreed to, and a year later the emancipation papers of Lunsford Lane were recorded in New York city.

Lunsford was, like most negroes, religious by nature. He says that attendance on church services was a means of much instruction for him. He got the written permission of his mistress to join the Baptist Church. Every Sunday there was one sermon for the slaves preached by a white parson—a law of 1831 forbade any slave or free negro to preach to slaves. These sermons, he says, were usually on the duty of the slaves to obey their masters. The texts were usually like these: "Servants, be obedient to them that are your masters," and "not with eye-service, as men pleasers." One kind-hearted preacher, whom all the slaves liked, became very unpopular when he preached a sermon in which he argued that God had predestined the negroes to be slaves. Lunsford found a friend in Dr. Heath, a Presbyterian minister, who afterwards became a popular temperance lecturer. He was a Virginian, and be-

fore coming to Raleigh had liberated a large number of slaves, and through the Colonization Society had sent them to Africa. His views of slavery were liberal, and he helped Lunsford in many ways.

The business sense of Lane now began to expand his lines of labor. Although he kept to the manufacture of tobacco, he added the making of pipes, and began to sell almost everything kept in an ordinary village store. He also opened a wood yard, and bought horses and wagons for use in connection with it. He was patronized by whites as well as by blacks. In 1839 he bought a house and lot, for which he paid \$500. It had long been his object to buy his wife and children, the latter of whom now numbered six. Mr. Smith offered to sell them for \$3000. This was thought to be too much, and after negotiating it was reduced to \$2500, at which sum the purchase was effected. He gave Mr. Smith five notes for \$500 each, and received in return that gentleman's obligation that when the notes were paid he would sign a bill of sale for the slaves. It is impossible not to notice here the rapid appreciation in the value of slave property. This woman and two of her children had been bought not more than eight years earlier for \$560, and were now sold at an advance of \$1940, and in the meantime the master had had her services. It was a happy day for the former slave when he brought his wife and children out from the house of bondage and gathered them around his own fireside with good hope of seeing them soon as free as himself. His achievement had been wonderful, and is an indication of what a policy of gradual emancipation might have done in developing his race, could circumstances have been so shaped that it might have been entered upon. He had paid \$1000 for his freedom. He had paid another \$1000 in yearly wages while he was hiring his time, had supported himself and helped to support his family in the meantime, had paid \$500 for his home, and had a good business in his own name.

All this prosperity was beginning to attract the notice of the whites. Several other negroes in the place were making progress in the same way. Some of the whites thought this was likely to have a bad effect on the slaves generally. Fearing something like this, Lunsford had been careful, as he said, not to intrude his intelligence, but to seem to know less than he did know. He dressed as poorly and fared as simply as if he were still a slave. He also said that he was careful never to do anything which looked like leadership of the other negroes, that he had done nothing disorderly, and that he had never plotted to free the slaves. The good opinion in which he was held by some of the best men in the place is evidence that this is true. On the evidence of his biographer none of these things were alleged against him. Everything indicates that he devoted himself quietly to the one object of purchasing his family. Certainly with that object in view it would have been a most unwise thing to appear to be an agitator. Throughout the administration of Governor Dudley, and through part of that of Governor Morehead, he was janitor and messenger in the office of the Governor's private secretary. Both the Governor and the private secretary testified to his great efficiency and integrity. To one class of whites, however, his presence and his success were becoming exceedingly objectionable. These were the younger and more adventurous members of the community. They were in most cases the poorer classes, although some reckless sons of the leading families acted with them. They inherited one effect of the system of slavery in the ignorance that all this class shared for lack of common schools. With untaught minds their passions were often the impulse of action, and such seems to have been the condition now. They were unable to see far enough to understand that an industrious and progressive negro like Lane would be an advantage to the negro race, making them more conservative and restraining the tendency to excesses. They became alarmed, and soon convinced themselves that it would be a great calamity if every

negro could buy himself and his family at the good round prices that Lane had paid. They determined to run him out of the community. Inasmuch as he had been freed in New York, they concluded that he came within the provision of a statute which forbade free negroes from other States from coming into North Carolina to live. Free negroes violating this act and not removing out of the State within twenty days after notice of it had been served on them were liable to a fine of \$500, in default of which they should be sold for ten years. About the first of November, 1840, Lane received notification from two justices of the peace as follows: "Unless you leave and remove out of this State within twenty days you will be proceeded against for the penalty prescribed by the said Act of Assembly, and be otherwise dealt with as the law directs."

There seems to have been no question that under the law Lane was indictable. He, for his part, appealed to his white friends. He went to see Mr. C. C. Battle, private secretary to Governor Dudley, who took up the matter with energy. Mr. Battle wrote to the attorney on the opposite side, mentioning the services of Lane, especially during the session of the Legislature, which was then about to begin, and asking that the prosecution might be suspended until January 1. No objection was made to this, and the matter was dropped for the time. The object was to stay proceedings until the Legislature met, and then to get a private law allowing the defendant to stay in the State until he had finished paying for his family, he agreeing to leave when that was accomplished. On the day the Legislature convened he was again summoned to appear before the same magistrates and show cause why he should not be punished for remaining in the city twenty days after notice had been given. He easily gave bail to appear at court thirty days later. At the meeting of the court the prosecution was not ready for trial, and the case was postponed until the next court, three months later. He thus gained four months. In the meantime his petition was before the Legislature. The other free negroes



in the town who were buying their families had received notices similar to that of Lunsford, and they, too, had petitioned the Legislature. The petitions were referred to a committee, which brought in a bill favorable to the negroes. The fate of this bill was a matter of great concern to Lunsford. No negro was allowed to enter the chambers of the two houses when the Assembly was in session. He found out the committee to whom the matter was referred, and then patiently traced it through its several stages until the day on which it was set for final decision. He waited anxiously around the Statehouse, he interviewed the members as he could approach them, and he awaited the result with great concern. Finally a member came out and said: "Well, Lunsford, the negro bill is killed." It was a severe blow to the poor man. To us, who view the matter after passions have cooled and the false theories of slavery are gone, it seems certainly to have been the doing of a great cruelty. It is to the great credit of Lunsford Lane and the other men who were in the same position that they bowed quietly and without open complaint to the decision. Slavery demanded, above all things, the certainty of its own perpetuation. Before that, all else—sympathy, confidence, generous sentiments, industrial skill, and public intelligence—must go down. It accordingly developed a hundred eyes with which to discover, and a hundred hands with which to stop, any movement of the slave that looked toward his freedom.

Nothing was now left for Lunsford but to make his preparations for leaving, and for leaving without his family. He thought of some friends he had made in the North when he had gone there to be liberated. Thither he now turned his steps. When he reached Washington City he called on Mr. Joseph Gales, formerly the editor of the *Raleigh Register*, but then living in Washington with his son, who was one of the editors of the *National Intelligencer*. Mr. Gales received him kindly, and undertook to help him on his journey. He gave him some recommendations, and warned him that he



might have trouble in getting through Baltimore, since the railroad station in that place was being watched closely to stop runaway slaves from the South. As it turned out he did have some difficulty in Baltimore, though not exactly the same kind that he had been warned against. He came near falling victim to what seems to have been a plot to kidnap and sell him into the far South from whose depths, if he ever reached there, his voice would probably never have been able to make itself heard by his friends. Shortly after he had reached the city he and a traveling companion were arrested, at the instance of a negro trader named Slatter, of rather unfavorable reputation, on the charge of being runaway slaves from the South. The case was tried before a magistrate named Shane, whom the negro friends of Lunsford considered an accomplice of Slatter. Regardless of the fact that the two men had their freedom papers properly signed, the justice was about to give judgment against them, when a Mr. Walsh, a rising young lawyer of the city, who was gaining some note as being on the side of the slaves, rose and made so strong an argument in favor of the men that the magistrate was constrained to release them. Lane then proceeded to Philadelphia, where he found friends, who, in turn, sent him on to other friends in New York. Here it was agreed that he should be given countenance in going through the North to make appeals for funds to liberate his family. Returning at once to the South, he settled his affairs preparatory to his departure. He had already paid Mr. Smith \$560 on his indebtedness, and he had received one boy, whom he took North and left with friends. Mr. Smith now agreed to accept the house and lot in Raleigh for \$500, provided, the balance of \$1440 should be paid in cash. It was arranged that the case then pending against him should be dropped, he paying the cost and leaving the State. With these things done, he left for the North just as the court to which he was bound over was convening.

His hopes of assistance were not in vain. By lecturing in many places, chiefly in New England, presenting the simple

facts of his experience, he was able to collect in about one year the amount he wanted to raise. Early in 1842 he wrote to Mr. Smith, asking him to get the Governor to give him a written permission to come back to Raleigh to get his family. The Governor replied that he had no authority to grant such a privilege, but that he thought it would be perfectly safe for Lane to come to Raleigh, provided he stayed no longer than twenty days. This seems to have been good law under the statute. On Saturday, April 23, 1842, the ex-slave arrived in Raleigh. He remained quietly with his family during Sunday, and Monday morning went to the store of Mr. Smith to have a settlement, hoping to be off as soon as possible. Before he could transact his business he was arrested and taken before the Mayor on the charge of "delivering abolition lectures in the State of Massachusetts." When asked to plead he said he did not know whether he was guilty or not. He recounted his early life in Raleigh, and recalled the story of his struggles, his persecution, and his expulsion. This story, he said, he had been telling in Massachusetts. He had told it privately, in churches, or wherever he could get a hearing. He had asked help in rescuing his family. The people had responded to his appeals. He had never asked a contributor whether he was an Abolitionist or not; but it was likely that he had received some money from that source. He closed by reminding them that he would not come back until the Governor had said that he thought it would not be a violation of the law. The Mayor then called for further evidence. None was offered, and the case was dismissed. This course by the Mayor was eminently proper. The action which Lane had no doubt committed would have had the effect of exciting the slaves if it had been committed in the South; but it was not in the State, and accordingly entirely without the jurisdiction of North Carolina courts; besides, the evidence against him was absolutely nothing. Nothing but the blindest feeling could have brought such a charge.

After the trial, Lunsford was about to leave the courtroom, when he was warned that he would be killed in five minutes if he went into the crowd that was collected in front of the door. The Mayor tried to pacify the crowd, but was unsuccessful. He advised Lane to leave the town the next day. Lane said he was willing to go at once, and would trust Mr. Loring, the Mayor, to take his money, settle with Mr. Smith and send on the liberated wife and children to Philadelphia. This was agreed upon, and Lane succeeded in reaching the station as the train was about to leave. The crowd, however, followed him, surrounded the train and declared that it should not leave with the object of their wrath on board. The Mayor was present and appealed to the mob, but in vain. They demanded that the negro's trunk should be searched for abolition literature. While they turned their attention to this task, Lane's friends were glad to hurry him off to the safety of the jail. This moment is described by Lunsford himself. He says: "Looking from my prison window I could see my trunk in the hands of officers Scott, Johnston and others, who were taking it to the City Hall for examination. I learned afterwards that they broke open my trunk, and as the lid flew up the mob cried out, 'a paper, a paper.' A number seized it at once, as hungry as hounds after a passing fugitive in the Southern swamps. They set up a yell of wild delight, and one young man of profligate character, a son of one of the most respectable families in the place, glanced upward toward my prison window and by signs and words expressed his gratification." The sheet, however, proved to be a local publication and entirely inoffensive. After the trunk was fully examined the carpet bag was searched. In neither could the crowd find anything that was criminating, and they were temporarily quieted.

Lane was advised to stay in the jail until night, and then go to the home of Mr. William Boylan, who was so highly esteemed in the community that his house, it was thought, would be a safe asylum. To this he assented. Between

nine and ten o'clock at night he left the jail ; but he had gone only a few yards when he was seized by a large number of people and rudely drawn away to an "old pine field," where the gallows stood, it being then a permanent institution in Raleigh. He thought they intended to hang him. At length they stopped. They began to question him about his abolition lectures. Finally a bucket and a feather pillow were brought. "A flood of light and even joy sprang up within me," says he. It was to be tar and feathers. A journeyman printer put on the first daub of tar. When the dressing had been applied in regular style, he was given his watch and his clothes and allowed to go his way. He went to his home. Some of his persecutors went with him. They had given an outlet to their passions in the great rough joke they had just played, and now they were in a good humor again. They laughingly watched him remove the tar and feathers, and told him that so far as they were concerned, he might stay in town as long as he chose.

In the meantime his friends had become alarmed, and had appealed to the Governor for protection. A detail of soldiers was accordingly furnished, which guarded him at Mr. Smith's house all night. Next morning he settled his business matters and made ready to start with his family for Philadelphia. His old friends now showed him the greatest kindness. One gave him food enough to last on his journey, and another sent a carriage to take him and his family to the station. He went to say farewell to his former mistress, Mrs. Haywood, who was then very old. She was much grieved at what had happened, and ended by giving him his aged mother to take with him. She added that he might pay her \$200 for the old woman if he ever felt himself able, and if not the loss should be her own. A great crowd had assembled to see the family off. Most of the mob of the day before were there, and appeared to be hostile still. Mr. Boylan had arranged with the conductor of the train to stop on the edge of the town and take up Lane, who was to wait there while his wife and children got on at the



station. The mob, not finding the object of their hatred, concluded that he would not leave on that day, and allowed the train to go. When Lunsford did get on he found one of them a passenger on the train. The rioter of the day before was very angry at the escape of his victim, and ran out as the train stopped at the stations, trying to excite the bystanders to go in and drag out the escaping Abolitionist. These attempts were unsuccessful, and in due time the fugitives arrived in Philadelphia.

Of Lunsford Lane's residence in the North but little need be said here. After a short stay in Philadelphia he went to New York, and from there he went to the annual May meeting of the Anti-Slavery Society. Later he settled in Boston. For some time he was engaged as a lecturer for the anti-slavery cause in New England. In this work he was said to have been very successful. On account of the severe climate of Boston, where he had lost three of his children, he at length removed to Oberlin, Ohio. Here another child died, and he lost through bad investments in real estate most of the money that he had been able to save. On the occurrence of the notable Oberlin Rescue Case he returned to Boston. Early in life he had learned something of the medicinal value of the ordinary herbs in the fields of the South. Relying on such knowledge, he began the manufacture of a medicine which he called "Dr. Lane's Vegetable Pills." In the sale of this he had some success. Later he removed to Worcester, and there remained for some time. He continued to be active in the anti-slavery cause until the war. When or where he died it has been impossible to learn.

The fact that he rose from slavery to freedom, and to some note as a lecturer, against the most discouraging opposition, is evidence that Lunsford Lane was a remarkable man. He was a true son of toil. He was patient, and when he was reviled, reviled not again. His biographer has given too little of a picture of his character. The annals of his native State, even when he was thought worthy of being mobbed, have



dropped his name. The little glimpse that we have of his real self shows what a promise of hope he was for the race he represented. We know enough to be certain that it was a most short-sighted policy in his State that drove him and a number of others out of the community, and made impossible the development of other negroes like unto him. Since the war we have sadly missed such strong characters in our negro population. Twenty-five years before the war there were more industrious, ambitious and capable negroes in the South than there were in 1865. Had the severe laws against emancipation and free negroes not been passed, the coming of freedom would have found the colored race with a number of superior individuals who in every locality would have been a core of conservatism for the benefit of both races. Under such conditions Lane would have been of great beneficent influence. This thought was impressed on the writer in a striking way during the past autumn. He was attending a fair of the negro race in a North Carolina city. Going the rounds of the exhibit of live-stock his attention was attracted by a placard which read: "Horses Owned and Exhibited by Lunsford Lane." Approaching a respectable-looking negro farmer, he said: "Who is Lunsford Lane?" "I am, sir," was the reply. "What kin are you to the original Lunsford Lane?" "Don't exactly know, sir; reckon he was my uncle." "What became of him?" said the writer, thinking to draw the colored man out. "Think he must 'a' emigrated," came the answer. Here was thrift enough to become the owner of a pair of very good farm horses, but not enough of intelligence to remember the fate of the most remarkable member of the man's family, who was still alive thirty years ago. How much did that family lose in the emigration of Lunsford Lane!

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NOTE:—On page 12 the publisher of "The Land of Gold" is given as Mr. Charles Mortimer. The authority for the statement is Mr. Helper himself, (See *Noonday Exigencies*—pp. 155-163). - A copy of "The Land of Gold," which has only come into my hands at the latest possible moment before going to press, has this in print: "Baltimore: Published for the Author, by Henry Taylor, Sun Iron Building, 1855." At this late moment I am unable to reconcile these two statements.

J. S. B.

LIFE AND ADMINISTRATION  
OF  
SIR ROBERT EDEN.







SIR ROBERT EDEN (1741-1784).

GOVERNOR OF THE PROVINCE OF MARYLAND 1768-1776.



SERIES XVI

Nos. 7-8-9

JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
HISTORICAL AND POLITICAL SCIENCE  
HERBERT B. ADAMS, Editor.

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History is past Politics and Politics are present History.—*Freeman*.

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Life and Administration

OF

Sir Robert Eden

BY

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# Life and Administration of Sir Robert Eden.

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## CHAPTER I.

### ANCESTRY AND EARLY YEARS.

The Edens' motto is "*Si sit prudentia*," a wish well satisfied in the life of the subject of this narrative, whose distinguishing traits were prudence and foresight. He came of good North Country lineage. Robert Eden's great grandfather, who bore the same Christian name, was created a Baronet. His son, John and his grandson, Robert both succeeded to the honor, and both sat in Parliament for Durham. The last-named, on May 8, 1730, married Mary, daughter of William Davison, Esq., of Beamish, County Durham.<sup>1</sup> He was then but twenty years of age, his wife but seventeen. To this couple were born eight sons and three daughters. It was a remarkable family. The eldest son, John, inherited the baronetcy and the family seat in Parliament; the second son, Robert, was to show his ability in trying circumstances in Maryland; the third son, William, was one of the Peace Commissioners to America in 1778, and was raised to the peerage as Lord Auckland; the fourth son, Thomas, was auditor of Greenwich Hospital and father of an admiral in the navy and a lieutenant general in the army; while the youngest son, Morton, was the skilled diplomatist, who was raised to the peerage as Lord Henley. Of

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<sup>1</sup> Gents. Mag. IX. 272.



the three daughters, Catharine, the second in age, married the Most Reverend John Moore, Archbishop of Canterbury.

As the father died early, it is probable the children owed much to their mother's care. Robert, the second son, was born<sup>1</sup> on September 14, 1741. We are unable to ascertain where he obtained his education. Wherever it was, his school days did not last long, though they enabled him to acquire an excellent knowledge of Latin and a pleasant English style in writing. When he was not quite fourteen years of age his father<sup>2</sup> died, and before he was sixteen he obtained

<sup>1</sup> Gents. Mag. XIX. 272. I desire to express my thanks to Rev. Robert A. Eden, Vicar of Old St. Pancras, London, a great grandson of Gov. Eden, for cordial interest and for much valuable information.

<sup>2</sup> Gents. Mag. XXV. 333. He is buried with his wife in the churchyard of St. Helen's, Auckland, just outside the east wall of the chancel. Their tombs bear the following inscriptions:

Here lies the Body  
of Sir Robert Eden, Bart.  
The only son & heir of Sir John Eden  
of West Auckland Bart,  
By Catherine Daughter of Mark Shaftoe  
of Whitworth Esq.  
He married  
Mary daughter of William Davison  
of Beamish Esq.  
By whom he had issue  
eight sons and three daughters all living  
at the time of his death.  
Departed this life on June 26th 1755  
In the thirty seventh year of his age  
Greatly lamented by his family and mournful widow  
Who when she dies intends her ashes shall  
rest in the same grave.

Here also lies the body  
of Mary Eden  
wife of the said Sir Robert Eden, Bart.  
who died January 30th, 1794 in the  
74th year of her age.

a commission in the army, on February 4, 1757, as Lieutenant Fireworker in the Royal Regiment of artillery.

On May 8, 1758, he was promoted from cadet to ensign in the Coldstream Regiment of Footguards,<sup>1</sup> and in that position he embarked with the second battalion of that famous regiment in July, 1760, for active service in Germany, where the seven years' war was then raging. He was promoted to the position of Lieutenant and Captain in the Coldstream Guards on September 23, 1762, and returned with his regiment to London at the conclusion of the war. His services had been doubtless commendable, but no especial record of them remains.

The frontispiece is copied from the only known likeness of Eden, and shows him at this period of his life dressed in the uniform of the Coldstream Guards—scarlet coat, with dark blue, almost purple, facings, gold buttons and edgings, crimson sash over right shoulder, white lace tie and ruffles at the wrist, buff waistcoat and breeches, dark garters, and white long stockings or gaiters. (The original of this portrait is a small oil painting, about fourteen inches high, by an unknown artist, in the possession of Mr. Frederick Morton Eden, of London, who kindly had it copied for this work.)

During the years now spent by him in England, he wooed and won the Hon. Caroline Calvert, after whom Caroline County, in Maryland, is named. She was the daughter of Charles, fifth Lord Baltimore, and sister of Frederick, sixth and last Lord Baltimore. The alliance with this family determined the whole future course of Eden's life, and brought him into that connection with Maryland in which he achieved his chief reputation. He was married<sup>2</sup> by Rev. Gregory Sharpe, curate, at St. George's, Hanover Square, London, on April 26, 1765, Lord Baltimore, the bride's

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<sup>1</sup> Information furnished by Col. J. B. Sterling, of the Coldstream Guards.

<sup>2</sup> Gents. Mag. XXXV. 247.

brother, and M. Shafto signing the register as witnesses. To Sir Robert Eden and his wife were born three children. The eldest was Sir Frederick Morton Eden,<sup>1</sup> the distinguished economist, who was born on June 13, 1766, and died on July 14, 1808; the second was Major-General William Thomas Eden,<sup>2</sup> who was born April 13, 1768, and died May 24, 1851; while the third child, and only daughter, was Catherine Eden, born in Annapolis, June 6, 1770, and died April 9, 1835, having been twice married. Shortly after the marriage Eden began to gain material advantages from his alliance with the Baltimore family. From the revenues of the province of Maryland he was granted by his brother-in-law an annuity of £100, payable semi-annually. This annuity continued until Eden's appointment as Governor.

## CHAPTER II.

### THE BEGINNING OF THE GOVERNORSHIP.

In 1768 Lord Baltimore, who was an absentee landlord, never visiting his palatinate, and either squandering the great revenues he received from thence in debauchery, or expending them in European travel, determined to appoint a new Governor in place of Horatio Sharpe, who had ruled most excellently in Maryland during the trying times of the French and Indian wars. As the successor in this important and lucrative post, he selected his brother-in-law, Capt. Robert Eden. Captain Eden accepted the position, and resigned his commission in the Coldstream Guards on July 14, 1768.

The appointment was a clear case of nepotism, and I regret to say that Eden seems to have done all in his power

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<sup>1</sup> Gents. Mag. XXVIII. 1178, Dict. of National Biog.

<sup>2</sup> Annual Reg. 1851. Sharpe Correspondence III., pp. 261, 321, 350, 384. In 1768, we hear of Eden introducing to Baltimore a friend who was desirous of obtaining a Maryland parish. *op. cit.* 475.

to supplant Sharpe. Though the trouble Sharpe was having with that "reverend scoundrel," Bennet Allen, may have partly alienated Baltimore from his Governor, this is not assigned as a reason for the transfer of the office to Eden. In the official<sup>1</sup> letter sent by Baltimore's secretary, Hamersley, to Sharpe, the cause of Eden's appointment is thus stated: "A similitude of pursuits,<sup>2</sup> joined to his Lordship's partiality for his sister, naturally led him to entertain hopes of one day succeeding your Excellency; hitherto his Lordship has resisted every temptation except that superior one which has so attached him to you. But the workings of nature, the merit of his brother-in-law to himself particularly, and the solicitations of relatives have at length prevailed and forced him to take the painful resolution of delegating the succession to Mr. Eden." The whole letter shows clearly Hamersley's disinclination to send Sharpe the news, and we may well believe Baltimore himself had only yielded to pressure. Sharpe had been a thoroughly honest and able servant, and had been successful in remitting the revenues to the absentee landlord. Baltimore might well have doubted whether the untried young man, whom he would send out, would be as successful a Governor as the one who had, for fifteen years, given proof of "unwearied zeal to promote the welfare of his Province."

Sharpe took the news in the best possible manner,<sup>3</sup> and wrote, even before receiving Hamersley's letter, that he hears Captain Eden has been appointed Governor, and is expected in Maryland before the end of the year. He thinks it strange that Eden, "or his lady at least," did not prefer "a summer passage" and "put off their voyage till next spring," but he is ready to remove to his "farm at a moment's warning, so that the house I live in might be ready for the recep-

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<sup>1</sup> Serj't's Inn, London, July 20, 1768. Sharpe Correspondence III., 515.

<sup>2</sup> Not a compliment for Eden.

<sup>3</sup> Sept. 15, 1768. Sharpe Correspondence III., 529.

tion of my successor's family." He closes his letter with the pleasant wish that Eden and his wife may "be as happy in America as they wish to be, and may Maryland flourish and prosper more under my successors than it has under mine or the administration of my predecessors."

In a second letter to Hamersley, written after the official news of Eden's appointment had reached him, Sharpe states that the reason given for the appointment is "very sufficient and satisfactory," and throws a curious light as to the way in which Baltimore and his ministers thought of Maryland as their private possession, by adding that Eden's expectations that the family into which he had married would provide well for him were "natural and extremely satisfactory."<sup>1</sup> In a third letter Sharpe adds further expressions of goodwill towards the new Governor,<sup>2</sup> and we may be sure that Eden found in his predecessor a wise and sagacious counsellor, whose advice would prevent him from mistakes at the beginning of his official career.

It was some time, however, ere he left for Maryland,<sup>3</sup> in which Province he did not arrive until June, 1769. The instructions given by the Crown and by Lord Baltimore to Eden are extant, and though, of course, similar to those given to other Governors in like circumstances, they are so important for our purpose as showing us what were the duties of the colonial Governors, and what functions Eden had to perform, that it is worth while to tarry for a short time over their main provisions.

The instructions given by the Crown deal wholly with revenue matters. First, as of most importance to the home

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<sup>1</sup> Sharpe Correspondence III., 534, 537.

<sup>2</sup> Oct. 30, 1768. Sharpe Correspondence III., 550, vide 557, 563. A letter of Hamersley to Sharpe dated July 20, 1769 (ob. cit., 563), renews the assurances of satisfaction with Sharpe's administration and states that it is supposed that Eden has arrived in Maryland.

<sup>3</sup> Commission of Governor was dated Aug. 1, 1768, and on Dec. 27, 1768, Eden took oaths before privy council. Aug. 12, 1768, he gave security for due execution of his office.



government, come directions to the new Governor to learn the laws of plantation trade and swear to obey them, to see that the naval officers give security to the Commissioners of Customs, and that the latter give a certificate thereof to him; that the naval officers and collectors reside in the same ports or towns; that the navigation laws be observed, and that bonds are taken from ships that they will obey the laws.

He is to examine ships' certificates and bills of lading, to look to the security of bonds and see that they are regularly discharged, to watch that the payment of duties does not free vessels from carrying their goods to Great Britain according to law, to transmit quarterly to England a list of the ships and vessels trading in the colony, and to send to England and to the collector of the port to which every vessel is bound copies of an invoice obtained from her master. If a vessel breaks the navigation laws, he is to have it seized. All fraud and use of forged papers are to be prevented, as far as possible. Laws, usages or customs repugnant to the laws of the United Kingdom are not to be made or allowed by him, but rather are to be declared void. The Governor must aid the collectors of customs and other officers, get the legislature to pay for making copies, for the principal officers of the customs, of all acts and papers which relate to their official duties, and see to it that these officers have free inspection of all public records. In cases of forfeiture for breach of revenue laws, the Governor must watch that the jury be sworn from those born in the royal dominions; he must aid the receivers of the tax on the seamen's wages for the benefit of Greenwich Hospital, must prevent smuggling, help the revenue officers in seizing smuggled goods, and prosecute smugglers. Places of trust in the courts of law, or in what relates to the treasury, he is directed to take care to keep in the hands of native-born subjects of the King, and if he discover anyone claiming property by charter or letters patent in any island or tract of land in America, and endeavoring to dispose of it to any but a native-born subject of the Crown, he must inform the British Government of it.

Correspondence is directed to be carried on by him with the commissioners of trade, telling them what is needful for them to know. Especial pains is to be taken that no wool is to be exported. No foreign-built ship is to be allowed to trade in Maryland, unless she show a British register, of which a duplicate must be sent to England. The Governor is to give attention that vessels taken at sea on letters of marque have especial register without change of name.

If there be indigo plantations in Maryland, the Governor must enforce the indigo act and transmit information to England from time to time concerning these plantations and the amount of foreign indigo imported.

The act requiring tobacco to be imported in casks, etc., holding forty-five pounds each, must be published by the Governor. He must prevent illicit trade with the East Indies or transgressions against the monopoly of the East India Company, as well as the landing of any ship, not that company's, laden with East India goods, unless it be a foreign vessel in distress and bound for the West Indies. Appeals to England by customs officers shall be allowed by him. These officers must be allowed also by the courts to plead the general issue, when sued, and to have all privileges they would enjoy in Great Britain. They must not be forced to pay heavy court fees, nor to serve on juries, nor to take parochial offices, which may hinder them exercising their duty, nor appear in arms, save in absolute necessity. The Governor must have execution suspended until the result be known, when an appeal is taken to Great Britain, and insist on security being given by the appellee to pay damages, should he lose his suit.

If the officers of customs are remiss, the Governor must suspend them. He must send word to England, from time to time, of all his proceedings, and he is warned that neglect to fulfil these numerous provisions may bring about the forfeiture of his bond and of the charter of the province, and may lead to heavy fines.

Lord Baltimore's instructions to his brother-in-law are

contained both in the commission and in a special paper addressed to Eden. The commission stated that, with the approval of George III, Eden is appointed Lieutenant Governor and Chief Governor of the provinces of Maryland and Avalon in America, and also commander-in-chief, both by sea and land, of all the forces within the limits of the said provinces, or the islands, territories and dominions thereunto belonging. He is further to appoint and remove officers; summon, prorogue and dissolve the General Assembly; with the Assembly to make needed laws, neither repugnant to the laws of England, nor prejudicial to the Proprietary's prerogative; to transmit such laws to Lord Baltimore for approval; to carry on the government in general, and to exercise all the powers of the Proprietary, as he would if present. All officers are ordered to obey Eden.

The separate paper of instructions bids Eden call together the Council of State immediately upon his arrival, show them his commission and instructions, and take the required oaths. He should then call together the Assembly, read them Baltimore's speech, and see to the passage of proper laws, reserving the veto power over all such to the Proprietary. In case of vacancies in the Council, he is to nominate to Lord Baltimore a suitable person, but is not to fill the vacancy himself, unless the Council fall below six in number. Then he may fill up the number, so as to make it seven, though Baltimore may even then reject the Governor's nominees. The number of councillors is not to be increased or diminished by the Governor, and those nominated by him thereto, as well as to all other offices, must be men "of good life, and well affected to our Church and State as by law established, and of good estates and abilities, and not necessitous persons or much in debt." If any councillor leave the province for above a year without permission, the Governor must declare his seat vacated. Eden must act according to the charter, "doing impartial justice unto all persons, His Most Sacred Majesty's subjects and our faithful tenants, committed by our power to your care." He must be

careful to discountenance any law of the Provincial Assembly introducing the Statutes of England in gross; or any disestablishing the church or dividing parishes without the incumbent's consent; or any private act passed without notice given to those concerned and without the insertion in the act of a clause saving the rights of the Proprietary and all not named in the act; or any act of unusual or extraordinary nature, without a clause suspending its going into force until Baltimore's pleasure concerning it be known; or any act comprehending several different subjects; or one containing a subject foreign to the title of the bill. He was to see that no act be suspended, altered, revived, confirmed or repealed by general words; that no act concerning paper currency be passed, unless in accordance with the act of Parliament on the subject; that "God Almighty be devoutly and duly served throughout your government, the Book of Common Prayer, as by law established, read each Sunday and holiday, and the blessed sacrament be duly administered according to the rites of the Church of England;" that churches already built be well and orderly kept, and that the Proprietary be notified of all vacant livings, so as to be able to fill them. In emergencies, Eden must use his discretion, transmitting a report of his action. All appointments made by the Governor to official places are to be only provisional till the Proprietary's pleasure be known. Copies of the proceedings of Council and Assembly must be sent to England, and all unabrogated instructions to prior Governors obeyed. In case of Eden's death or absence from the province, the eldest Councillor is to take the office of the Governor, but must not assent to any act save such as may be immediately necessary.

The responsibility of carrying out these instructions was given to Capt. Robert Eden, at that time not twenty-eight years of age. He had, however, but little of the rashness of youth, and was well fitted to fill the post to which he had been assigned. He was "easy of access, courteous to all, and fascinating by his accomplishments."



Governor Robert Eden, with his wife, his two infant sons and his attendants, arrived at Annapolis<sup>1</sup> on the ship *Lord Baltimore* on June 5, 1769. On coming to anchor she fired seven guns, which were answered by an equal number from the shore. On landing, the new Governor was met by the members of Council then in town, and by many citizens, while all the cannon at the battery were discharged.

The day after his arrival in Annapolis, Eden took the oaths of Governor and Chancellor, received the great seal from Governor Sharpe, and issued a proclamation, announcing his arrival as Governor and continuing the previous officials till further notice. On June 12 he filed with the Council his various instructions.

On assuming the reins of government, he found affairs in a troublous condition. The colonies had never recovered from their vexation at the passage of Townshend's revenue acts, and the Virginia House of Burgesses had just shown such an independent spirit that even the popular Lord Botetourt had felt obliged to dissolve them and send an express to England with an account of their action.

Their resolutions claimed the sole right of colonial taxation for the colonial legislature, and that all trials should take place in the colony in which the alleged offence was committed, and asked that the other colonies pass similar resolutions and join in a petition to the King. Eden feared that, if the Maryland Assembly should meet at the time to which they had been last prorogued, they would be "influenced by the zeal and example of their neighbors, animated by their ideas of liberty, and, perhaps, by an opinion of their honorable connection with Virginia," they might be led thus to pass similar resolves, which would drive Eden "to the necessity of dissolving the Assembly." From this measure he was very "averse," "especially in the beginning" of his administration. On June 21 the Governor sent to Lord Hillsborough his first official report, telling him how he solved

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<sup>1</sup> Ridgely, *Annals of Annapolis*, p. 141, *Md. Gazette*.



the difficulty, and showing that he had already gotten a clear comprehension of the state of affairs in the province. He summoned the Council of State, stated to them his views in writing, took their advice and then "issued a proclamation, proroguing the Assembly to Tuesday, the 14th November." He referred to it in this pleasant, humorous way: "I hope that their Passions against that Period may, as well as the weather, be cooler than they are at present, though I beg leave to assure your Lordship, they are not so violent as I expected from some accounts I had heard of them." We see in this first letter that Eden assumes that role of apologist for the people of his province, which he ever retained in his letters to England. He also hoped to get instruction from home before the prorogued Assembly could meet, and felt that the postponement could occasion little inconvenience to the province. There were no bills which would expire in the interim, and an earlier meeting would have really been less convenient to the planters; "for, though their corn harvest is generally over before the middle of July, yet, as the Tobacco and Sowing Seasons would have interfered, a Prorogation in the middle of the Session would have been necessary on that account, had nothing else required it."

The Virginia resolutions were not the only cause for uneasiness to the new Governor. Within a short time after the appearance of his proclamation assuming the government of the province, came one of the forerunners of that convention of the freemen of Maryland, which should succeed him. On June 20, 1769, several of the counties having previously passed resolutions for no importation of "British superfluities," and the province in general being invited to send delegates to a convention by the people of Anne Arundel County, there was held at Annapolis a meeting of gentlemen from the various counties, which passed sweeping resolutions, to have force throughout the province. These resolutions specify with considerable minuteness what goods may not be imported, direct tradesmen not to raise

their prices in consequence of the diminished stock of goods, and forbid anyone to kill lambs or buy goods from an Englishman. The province must obey these resolutions of this extra-constitutional gathering, so long as the British laws taxing the colonies should be in force, or until a meeting of the whole province should rescind the resolutions. Three days after the meeting Eden transmitted the resolutions to Lord Hillsborough, and stated that, considering the meeting a private one, he took no notice of it. He had not yet learned the stubborn nature of the provincials, nor did he fully appreciate the meaning of those resolutions.

For a time, however, political affairs went with comparative smoothness. The people were specially happy to have a representative of the immediate family of the Lord Proprietary among them. One of the lyrists of the day was inspired to fill a column of the *Maryland Gazette* with a poem beginning, "He comes, see Eden comes! Auspicious day," and closing as follows:

"Long as, or grass shall grow, or river run,  
Or blow the winds, or shine yon glowing sun,  
May Eden and his sons here reign and stay.  
Themselves as happy as the realms they sway."<sup>1</sup>

The justices of Talbot County presented the Governor an address, to which Eden answered that, "prompted by my inclination as well as by the emulation inherent in every soldier's breast, I shall venture upon the arduous task of endeavoring to equal my predecessor in the execution of the trust reposed in me."<sup>2</sup>

The generous, open and social disposition of the new Governor soon won him friends. He entered heartily into the life of the provincial gentry and shared all their pleasures. Soon after his arrival he was chosen to act with his predecessor, Governor Sharpe, as one of the stewards of the An-

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<sup>1</sup> Md. Gaz., Aug. 3, 1769.

<sup>2</sup> Md. Gaz., Aug. 17, 1769.

napolis Jockey Club,<sup>1</sup> and in the fall races at Annapolis in 1769 he entered his horse *Regulus* for the Ladies' Purse.<sup>2</sup> This he failed to win, as the steed threw his rider and was distanced in the first heat.

His residence<sup>3</sup> was the house originally built by Edmund Jennings, Esq. This Eden purchased for his official mansion, and added to it the wings and the long room. After serving for a century as the executive mansion, the house was bought by the Federal Government some years since, and is now used as the Naval Academy Library. About it was a garden,<sup>4</sup> not extensive, but disposed to the utmost advantage. Its centre walk extended to a small round mount, close to the Severn river. From this elevation there was an extensive view of the bay and the adjacent country. In this residence William Eddis found him, when he disembarked at Annapolis on the morning of Sunday, September 3, 1769. Eddis, whose "Letters from America" are one of the most valuable sources for the history of these times, came to Maryland to become a public official, and found in the Governor a faithful friend and protector. Apparently, he had never met Eden before this time, yet was greeted with a reception equal to his "warmest wishes."<sup>5</sup> Eden received him with open and friendly deportment, and at once invited him to meet a party at dinner, after the church service. At that time, quite a company of "persons of the highest respectability" assembled, and Eddis found himself treated "with the utmost kindness and cordiality," assured of the Governor's "strongest disposition to advance his future prosperity," and invited to this hospitable table at any time

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<sup>1</sup> *Maryland Gazette*, Mar. 18, 1770.

<sup>2</sup> *Maryland Gazette*, Oct. 26, 1769.

<sup>3</sup> The Assembly allowed him £80 for house rent. *Proceedings of* 1770, p. 268. Taylor's *Hist. of Annapolis*, p. 16.

<sup>4</sup> Eddis, *Letters from America*, p. 17.

<sup>5</sup> Eddis, p. 8.

convenient to him.<sup>1</sup> Such affability was characteristic of Eden, and it was not confined to mere words, so that Eddis, when he published his letters in 1792, found no need to moderate the enthusiastic expressions he had put on paper at his first meeting with his patron.

Among the prominent men of the province, who speedily became warm friends of Eden, were John Beale Bordley, Judge of the Admiralty Court, whom Eden visited several times in 1771 and 1772 at his plantation on Wye Island, and with whom he occasionally corresponded,<sup>2</sup> and Col. William Fitzhugh, of Rousby Hall, in Calvert County. Colonel Fitzhugh, who had served in the British army in the Carthage expedition, and was a British half-pay officer until he threw up his commission in June, 1776, rather than fight against America,<sup>3</sup> had married, as his second wife, the mistress of Rousby Hall, in Calvert County, and had removed thither from his former home, in Westmoreland County, Virginia. By his first wife he had a son, George Lee Mason Fitzhugh,<sup>4</sup> who was near Eden's age, and who was, if possible, a more intimate friend of the Governor than was his father, Colonel Fitzhugh. These were most prominent among the Governor's friends, but by no means the only ones. The whole body of the colonial gentry were delighted to entertain the young Governor. When early in October, 1769, he crossed the bay with a party to pay a visit to Mr. ——— C———, at his plantation on an island in the Chesapeake, early in the morning, after their arrival,<sup>5</sup> "several of the neighboring gentry visited the island to pay their respects to the Governor, and invitations poured in from every quarter." All of these, however, the necessity of a return to Annapolis forced Eden to decline, save one to spend the

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<sup>1</sup> Eddis, p. 9.

<sup>2</sup> Gibson's Sketches of the Bordleys, p. 82.

<sup>3</sup> He was one of the convention which drew Md. Constitution of 1776.

<sup>4</sup> Conway's Barons of the Potomac and the Rappahannock, p. 204.

<sup>5</sup> Eddis, p. 22.

night with Mr. H——, on Kent Island. Such little glimpses of his life show us something of the liking the provincials had for him.

His administration, however, was, even at its beginning, far from being all play. In the great departments of the State in England<sup>1</sup> there were few who possessed so extensive a patronage as the Governor of Maryland.<sup>2</sup> In the performance of his duty, Eddis<sup>3</sup> tells us, "not only in the summer, but during the extreme rigour of an American winter, it is his custom to rise early; till the hour of dinner he devotes the whole of his time to provincial concerns; the meanest individual obtains an easy and immediate access to his person; he investigates with accuracy the complicated duties of his station, and discovers upon every occasion alacrity in the dispatch of business and a perfect knowledge of the relative connexion of the country."

As Governor, Eden was representative both of the Crown and of the Lord Proprietary.<sup>4</sup> He called together, prorogued and dissolved the assemblies, approved or vetoed laws, pardoned criminals,<sup>5</sup> issued warrants for the execution of those convicted of capital offences, and appointed the clergy to the various parishes, whereby he was able "to provide in an ample manner for many worthy and respectable characters."<sup>6</sup>

As the time for the fall races and the session of the Assembly drew near, the gentlemen from the counties, with their families, came to Annapolis for the winter. When winter came on, the fortnightly assemblies began in a large and elegant room, "illuminated to great advantage." For those who did not dance, card tables were provided in rooms at

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<sup>1</sup> He appointed all officers save those of the customs.

<sup>2</sup> Eddis, p. 24, 125.

<sup>3</sup> Eddis, p. 37.

<sup>4</sup> Eddis, p. 44.

<sup>5</sup> Eddis, p. 127.

<sup>6</sup> Eddis, p. 46.



the ends of the hall.<sup>1</sup> Eddis wrote home that there were "few towns of the same size, in any part of the British dominions, that can boast a more polished society," and that, without exception, it surpassed all towns of its size in its great "number of fashionable and handsome women," who showed no less refinement in their manners than those possessing "a long and familiar intercourse with the manners and habits of your great metropolis."<sup>2</sup> In short, "hospitality is the characteristic of the inhabitants," and "party prejudices," we are told by Eddis, "have little influence on social intercourse."<sup>3</sup> This society was not confined to the city itself, but in the vicinity were "many pleasant villas, whose proprietors are eminent for their hospitality."<sup>4</sup> Nor was literature lacking, and in addition to private libraries, William Aikman's Circulating Library furnished books.

So much for private affairs; public ones did not wear the most flattering aspect.<sup>6</sup> The taxes in Townshend's revenue measure and the establishment of courts of admiralty were the chief grounds of complaint.

Early in August Eden received a letter from Lord Hillsborough, stating that the British Government had no intention to lay further taxes, but rather to take off the duties on glass, paper and colors, upon consideration that such duties had been "laid contrary to the true principles of commerce." This letter Eden immediately transmitted to the *Maryland Gazette*,<sup>7</sup> which published it, as a "proof of His Majesty's most gracious attention to the united petitions of his subjects, which cannot too much endear him to us." A great part of the Province did not agree with this effusion of loy-

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<sup>1</sup> Eddis, p. 31.

<sup>2</sup> Eddis, p. 32.

<sup>3</sup> Eddis, p. 93.

<sup>4</sup> Eddis, p. 20.

<sup>5</sup> *Maryland Gazette*, July 1773.

<sup>6</sup> Eddis, p. 25.

<sup>7</sup> *Maryland Gazette*, Aug. 10, 1769. Council agreed to this on Aug. 4.

alty, as we shall see. At the time, however, the letter seemed to Eden to give very great satisfaction, so that he hoped it would be the beginning of a reconciliation of differences.<sup>1</sup> This assurance was received with pleasure in England, and led Lord Hillsborough to an expression of approval of Eden's conduct.<sup>2</sup>

### CHAPTER III.

#### THE ASSEMBLY OF MARYLAND.

On November 17, 1769, the session of the Legislature began. The Governor and Council met in the small building still standing, and now used as the State Treasury. The Assembly came together in the old Statehouse, which stood on the site of the present one. In the former body were such leaders of the provincials as Richard Lee, Benedict Calvert, Daniel Dulany, John Ridout, Walter Dulany, John Beale Bordley and William Fitzhugh, while the representative body, presided over by Robert Lloyd, counted among its members such able and prominent men as Matthew Tilghman and John Goldsborough, of Talbot; Edward Tilghman and James Hollyday, of Queen Anne's; Samuel Chase, Brice T. B. Worthington and Thomas Johnson, Jr., of Anne Arundel; Wm. Paca, of Annapolis; Stephen Bordley, of Kent, and Thomas Key, of St. Mary's. The legal element was the prominent one, as in all Maryland's early history, and its influence is shown in the terminology and the technical character of the documents drawn up by both houses. The two houses being assembled for this session, the third one of that Assembly, they were thus addressed by their new Governor :<sup>3</sup>

"Gentlemen of the Upper and Lower Houses of Assem-

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<sup>1</sup> Letter of Aug. 14, 1769. A. and W. I. Prop., Vol. 181, 3 folios.

<sup>2</sup> Letter of Nov. 4, 1769.

<sup>3</sup> Council agreed to this address on Nov. 12.

bly: From my desire of accommodating the public business to your private affairs, I have delayed calling you together, nor should I, did not the exigencies of government make it necessary, now meet you, merely to notify the Lord Baltimore's appointment of me to succeed Colonel Sharpe as Governor of this Province, to merit which honour and the trust thus reposed in me, I shall ever consider it my indispensable duty to promote on all occasions the prosperity of Maryland.

"Gentlemen of the Lower House:

"Convinced as I am that the real interests of the Lord Proprietary and the people of this Province are inseparable, I meet the Assembly with the most agreeable prospect. From your attachment to the welfare of your country, and from your knowledge of its circumstances, and from your moderation and prudence, I derive the most persuasive and pleasing expectation that this session will be distinguished by the benefits which a dispassionate and amicable intercourse cannot fail to produce, by the propriety of your proceedings, and by the utility of those laws which shall be enacted.

"His Lordship has been pleased to assure you, in the message I am now to have the honour of delivering to you, that if you will prepare the plan for the further improvement of the Province, his encouragement shall not be wanting. Though I warmly wish that a well-founded provision for a more liberal institution of youth may be established here, yet I do not undertake at this time to recommend particular objects to your attention, the observation I have made, during the short interval since my arrival, not affording me sufficient grounds, and if that interval had been much longer, your experience would probably anticipate my recommendations. But give me leave to assure you, you may always rely upon my most cordial concurrence in every measure you may propose conducive to the welfare and happiness of the Province.

"Gentlemen of both houses :

"I am sensible I shall be judged by my actions, and not by any assurances I may give you of my future conduct ; to that test I most readily submit, and shall be truly happy, when I leave you, to be able, like my predecessor, to lay my hand on my heart in confidence of having acted solely on the principles here laid down, and having merited, by so doing, the thanks of those, over whom I have the honour to preside."

I have given this speech in full because it is an excellent specimen of those delivered by the Governor at the opening of sessions of the Assembly ; because it was his first public announcement of that administrative policy which he steadfastly pursued, and because it shows, in its modest, well-chosen words, its sympathetic spirit and its zeal for education, some of the best characteristics of this fine English gentleman. The message<sup>1</sup> from Frederick, Lord Baltimore, above referred to, would have had more value if the provincials had not too good reason to distrust his Lordship's interest in their welfare. They found, however, that his praise of his brother-in-law was justified. When referring to Eden, as "endeared to me by the nearest ties of affinity, friendship and affection," he said : "Could I distrust his abilities or inclination to make you happy, he is the last person, to whom I would have delegated my authority. Receive him, then, as you find him, credit us both till you have tried him, and if, upon experiment, his merits shall be found to outweigh his failings, excuse my partiality, and render him the justice he shall deserve. I shall ask no more, nor will you return us less."<sup>2</sup>

The two houses shortly returned addresses couched in

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<sup>1</sup> Lord Baltimore sent two letters as alternatives. The Council advised against reading the longer one, which referred with satisfaction to the completion of Mason's & Dixon's Line and mentions division of opinion between proprietary and people.

<sup>2</sup> *Maryland Gazette*, Nov. 23, 1769.

glad and hopeful words, though the Lower House excused itself from doing anything in relation to education at that time on account of the approaching winter.<sup>1</sup>

So rejoiced was Eden over these addresses that on November 23 he wrote to Lord Hillsborough that there was every appearance of harmony, and that he expected a speedy termination of all the troubles.<sup>2</sup> He reckoned without his host. It is true the question as to the amount of fees which officers should receive did not yet appear a great difficulty, though it was soon to cause so much trouble. The fee bill, which was just expiring, was extended for another year to October 1, 1770, but to this there was considerable opposition, led by Samuel Chase and Thomas Johnson, and about one-third of the Lower House voted against it in its various stages.<sup>3</sup> Another controverted point was whether writs of replevin should be issued from county courts. Previously they had only been issued by the Governor as Chancellor. This had produced hardship, and the Lower House wished to make it more easy to obtain the writ. The Upper House amended the bill, requiring a fee to be paid to the Chancellor whenever the writ was sued out. This the Assembly refused to accept, stating "we shall never advisedly consent to any fee being paid where no service is done."<sup>4</sup> The beginning of the struggle over all fees was not far off.

The sheriffs were appointed by the Governor, and were prominent representatives of the proprietary party. They were accused of abusing their powers, and two addresses were sent by the Lower House to the Governor at this session,<sup>5</sup> one complaining of brutal conduct of the sheriff of Charles County, Richard Lee, Jr., in the treatment of a pris-

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<sup>1</sup> Ass. Proceedings, pp. 212, 213.

<sup>2</sup> Answered on Feb. 17, 1770, with request that he transmit laws passed since 1763.

<sup>3</sup> Ass. Proceedings, pp. 219, 220, 221, 223, 231, 232.

<sup>4</sup> Proceedings, p. 226.

<sup>5</sup> Proceedings, p. 235, 237, 250, 253.



oner,<sup>1</sup> and the other alleging that four of the sheriffs had illegally retained license fees.<sup>2</sup> Then, too, there was a long-standing dispute with the Proprietary respecting a tax of fourteen pence sterling per ton of shipping, for his private use, and of twelve pence per hogshead of the cargo "for the support of government," under laws which, the Assembly say, "in the opinion of the people of this province have no real existence."

The Lower House had appointed a London agent to represent them, but the Upper House refused to give him a salary. The Upper House was becoming very much disliked by the Lower one for its "attachment to private property interest and to the profits of office." There was too much ground for this accusation. A little later we find of the members of the Upper House,<sup>3</sup> one, Daniel Dulany, was Secretary of the Province; another, Walter Dulany, Commissary General; a third, Daniel, of St. Thomas Jenifer, Agent and Receiver General; a fourth, John Beale Bordley, Judge of the Admiralty Court; a fifth, William Fitzhugh, Treasurer of the Western Shore; a sixth, William Hayward, Rent Roll Keeper of the Western Shore, and two others, Benedict Calvert and George Steuart, Judges of the Land Office. There was one vacancy in the Upper House, which should have consisted of twelve members. Eight we have already mentioned. Of the other three, one was quite old, and a second newly appointed. Only one of the prominent provincial offices, that of Attorney General, was held by a person not a member of the Upper House.<sup>4</sup>

While local grievances were complained of, the great constitutional questions were not forgotten. Eden's purpose in

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<sup>1</sup> On May 8 and 9, 1770, Council heard the case. Lee's accusers did not appear and he presented affidavits exculpating himself. He was acquitted.

<sup>2</sup> An act was passed and assented to by Eden to prevent such abuses in the future. Act of 1769, ch. 15.

<sup>3</sup> Proceedings, pp. 238, 249, 251.

<sup>4</sup> Allen Papers. I. No. 92, 1772.

proroguing the Legislature was a complete failure. In vain did he send them the letter from Lord Hillsborough, received some months since. They resolved unanimously,<sup>1</sup> on December 20, "that the representatives of the freemen of Maryland, in their legislative capacity, with the assent of the other part of the Legislature, have alone the right to lay taxes in Maryland." In spirit similar to that of the Virginians, the Assembly concur with their resolutions and pass resolves of their own, claiming the right of petition, of combination with other colonies in such petition, and of having trial by a jury of the vicinage for all accused persons. They direct the Speaker to send these resolves to other colonies for their concurrence, and order them printed in the *Maryland Gazette*.

This session was also noteworthy for taking the first steps towards the erection of the present capitol. It is a fine colonial structure, and was probably, when built, the grandest edifice in the British colonies. The act, passed in 1769, directed the issue of £318,000 in bills of credit, the whole sum to be redeemed in twelve years. Of this amount, £7500 sterling were to be devoted to building "a new Statehouse, and enlarging, repairing and enclosing the parade." The new building should contain two rooms for the Houses of Assembly, a room for the provincial court, two jury rooms, four committee rooms, and repositories for the records of the Houses, of the various courts, and of the land office.<sup>2</sup>

The resolves, concurring with those of Virginia, were passed on the last day of the session, and shortly thereafter the Governor prorogued the Assembly. In his speech of prorogation he refers with approbation to the seizing the "favorable opportunity of erecting the necessary public buildings, without burdening the subject by additional taxes," and to their supplying a needed "medium of commerce" by the issue of the bills of credit.

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<sup>1</sup> Proceedings, p. 248.

<sup>2</sup> Laws of 1769, ch. 14.

I almost wonder whether Eden can have known of the recently-passed resolutions, when I read that he thanked the gentlemen of the Lower House for "your steady application to the business brought before you, notwithstanding your well-founded apprehension of the inclement weather setting in."<sup>1</sup> This faithfulness, he tells them, "shows you justly worthy of the trust your constituents have placed in you." But we must remember that Eden's opinions were extremely liberal, and he may have, in a quiet way, approved of the resolutions, though so contrary to the claims of the British Government.

The day after the prorogation of the Assembly<sup>2</sup> a numerous meeting was held at Annapolis, at which many gentlemen from the counties were present, and it was determined to continue the non-importation agreement. The people were in no mind to yield.

Eden was forced to remain in Annapolis some time after prorogation of the Legislature, and was not able to embark, as he had expected, on the morning of December 22, with "a circle of select friends," among whom was Eddis, on Col. Wm. Fitzhugh's schooner. After a "pleasant run" they arrived at Rousby Hall, on the Patuxent river, near its mouth, and there spent a merry Christmas. Eden did not leave until the 26th, and then began a tour of visits among the principal families of Calvert, St. Mary's, Charles, Prince George's and Anne Arundel Counties. Everywhere throughout Southern Maryland he was "received with the most obliging proofs of regard and attention." In the course of their trip the party found at each house "excellent accommodations and sumptuous fare." Inclemency of weather prevented them from crossing the Potomac into Virginia, as they had intended, so as to visit Col. George Washington at Mount Vernon. This was apparently the only disappointment met with on the trip, which ended<sup>3</sup> at Annapolis

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<sup>1</sup> Proceedings, p. 253.

<sup>2</sup> *Maryland Gazette*, Dec. 21, 1769.

<sup>3</sup> Eddis, p. 126 ff.

on January 14. The weather had grown extremely cold shortly after Christmas, rivers became passable on the ice for heavily-laden wagons, ponds were covered with skaters,<sup>1</sup> and the *Maryland Gazette*, for some weeks, was compelled to reduce its size to a half-sheet, inasmuch as it had so little news to give, communication with the outside world being prevented by the ice in the bay.

This cold did not stop the winter's gayety, and the season found its culmination in a "grand entertainment," given by the Governor to a "numerous party" on Lord Baltimore's birthday. At this "the festivity concluded with cards and dancing, which engaged the attention of their respective votaries till an early hour."<sup>2</sup>

All was not gayety, however. Non-importation was a vexatious matter. About the end of January, 1770, the brig Good Intent, Capt. William Errington, arrived at Annapolis, laden with goods consigned to merchants there. These gave notice that they would allow none of the goods to be landed for twelve days, to permit the committee of inspection to examine them. Four commissioners from the various counties came thereupon to Annapolis and decided that the vessel must be sent back without unloading her. Upon the news of this determination, Eden "endeavored, as my duty to my sovereign and the colony demanded, to persuade them to reconsider the matter, \* \* but could not convince them of the impropriety of their conduct on this occasion, when they have the greatest reason to expect that the act they complain of as a grievance is already, or shortly will be, repealed."<sup>3</sup> His arguments had no effect, and the brig had to return to England, "liable to be seized in the first English port she enters for carrying back India goods and other things, contrary to the condition of the bonds given on shipping them; liable also to actions on every bill

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<sup>1</sup> Eddis, p. 33.

<sup>2</sup> Eddis, p. 31.

<sup>3</sup> Scharf, Hist. of Md., II., 114.

of lading given by the Captain, who could act not otherwise than he has done." This transaction showed the powerlessness of the Proprietary Government to control the popular will. Lord Hillsborough, in his answer to Eden's letters reporting the affair, told him the Proprietary was "undoubtedly responsible for the due execution of the powers of the government vested in him by his charter." Yet such "execution" was impossible.

The duty was taken off everything but tea on April 12, 1770, but this partial repeal, which still continued the claim of England that she had right to lay taxes, suited Maryland as little as it did the other colonies. Eden wrote to Lord Hillsborough<sup>1</sup> on August 19, 1770: "From what I can observe, I do not imagine that the taking off the duties on glass, paper and colors will put an end to the association while the duty on tea continues. Though there are some here desirous of ending it and associating not to import tea, the general voice is that it will stand as a precedent for laying duties in America on some future occasion." Eden had tried to convince the Marylanders that the act could only serve as a "relief," inasmuch as by it the amount to be paid for tea was less than before, and that "we" (the pronoun is suggestive of Eden's thorough identification of himself with the provincials) ought not at any rate to complain of an act that was beneficial to us, as this is." This attempt had failed; they were willing to pay more for tea, if there were no tax on it in the colonies.

In the same letter, he expressed regret at the censure passed on his conduct respecting the "Good Intent," and states that the discontent is universal throughout the colonies, and he can do little but lament the unhappy differences existing between Great Britain and the Americans.

Just previous to this, Eden had applied for a Lieutenant Colonel's Brevet,<sup>2</sup> on the grounds of his fourteen years' ser-

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<sup>1</sup> Scharf II, 117. *Maryland Gazette*, June 14, 1770.

<sup>2</sup> Letters of Aug. 7, 1770, and Nov. 15, 1770.



vice to the King, of his conduct in the Seven Years' War, and of the precedent of Governor Sharpe, his predecessor, who received the honor now asked for, "without a superior claim." This request was not granted, though Eden stated that he chiefly made it, so "as to be able, in case of a *new* war, to promote the British cause to the utmost of my little abilities and experience in the *last*, which I can only be enabled to do, by an addition to my rank, should my assistance be required out of the province I preside over."<sup>1</sup>

The relations between the State Church, the Anglican one, and the Governor had become clearly defined by the end of the first year of his administration. He had considerable power in religious matters, having at his disposal the patronage of the forty-four parishes, into which the province was divided. In November, 1769, he showed his sympathy with the State Church in an answer to a petition from the clergy that he would endorse and transmit a petition from them to the Lord Proprietary to incorporate in Maryland "a society of support and relief of widows and children of deceased clergymen."<sup>2</sup> In granting their requests, he tells them of his "most earnest inclination to encourage the deserving ministers of the established church, and to prevent any increase of sects dissenting therefrom, too many of whom I have reason to fear have got footing within this province. Your pious endeavors can best stop their further progress, in which I have the greatest reason to expect you will not be wanting." While he thus showed himself favorable to the established church, he was by no means subservient to all of their demands, and in 1770 sternly repressed one of the many attempts to have a Bishop in the colonies. There was sent him in that year a petition<sup>3</sup> from nine clergymen, signed by Robert Reed, secretary, stating that, for want of a Bishop,

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<sup>1</sup> Letter of April 4, 1771.

<sup>2</sup> *Maryland Gazette*, Nov. 23, 1769.

<sup>3</sup> Enclosures were made of letters to the King, the Proprietary and the English Church.

sectaries grow rapidly and deny the Proprietary's right of presentation.<sup>1</sup> To this Eden answered severely; first, because it was not signed individually, but by a person in official character, unknown to the constitution; secondly, he has never heard that sectaries deny the right of presentation, to which "no degree of support or assistance is needed from Episcopal authority." We see the jealousy of the Proprietary here, and the desire to preserve undiminished his control of the church. "How far," Eden proceeds, "and under what forms the establishment of an American Bishop may be a salutary measure, is a consideration of the most momentous concern, deserving the most serious and mature attention, and, being of so great and extensive importance, I shall take an early opportunity of laying the matter before the General Assembly, together with your address and the papers attending it. The motives both of duty and inclination will ever engage me to countenance the worthy ministers of the established church, and to support the just rights of the clergy of Maryland, holding it, at the same time, to be my indispensable duty to protect all quiet and peaceable subjects of every denomination in the full enjoyment of their rights."<sup>2</sup> The reference to the Assembly, if it had not been overlooked in the stormy times to follow, might have brought about strange results. The fact that he proposed it is one of Eden's many instances of feeling for the popular side.

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<sup>1</sup> *Maryland Gazette*, Feb. 11, 1773.

<sup>2</sup> On the next day the signers answer Eden's rebuke, and say they are a committee of the clergy appointed to present the matter to him. Council supported Eden vigorously in his policy (vide records Sept. 15 and ff., 1770). Unfortunately, the Council Records are lost from this on, and we are deprived of their guidance.

## CHAPTER IV.

## THE QUARREL OVER THE FEE BILL.

In June, 1770, Eddis wrote to a friend in England that "it is a certain fact that the statute imposing duties on glass, paper and tea has undermined the foundation of the cordiality which the repeal of the stamp act had happily re-established, and it is with the utmost concern I am necessitated to acquaint you that a spirit of discontent and disunion is universally predominant in the colonies."<sup>1</sup> Maryland's citizens were as bold as any others and as obstinate in their opposition to taxation. A month after the writing of the letter we have quoted, New York gave up enforcing the non-importation agreement. Lord Hillsborough wrote<sup>2</sup> to Eden that he hoped this "may have a happy influence on the people of Maryland;" but this hope was unfulfilled. In August a Talbot County convention passed resolves<sup>3</sup> violently attacking New York for yielding and renouncing "all commercial connection, correspondence, dealings and intercourse with the Province of New York until either they shall retract their error, or the act retaining the duty on the tea be repealed." Baltimore town, early in October,<sup>4</sup> wished to have the non-importation agreement given up, but a provisional convention, meeting at Annapolis later in the month, decided to hold to it and spoke of Baltimore's request as an "indecent and inconsistent" message.

But now all other causes of difficulty were forgotten in the question of the regulation of the fees paid to officers of the

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<sup>1</sup> Letters from America, p. 62.

<sup>2</sup> Oct. 3, 1770.

*Maryland Gazette.*

Scharf, II, 119.

Proprietary government.<sup>1</sup> The act of 1763 expired in October, 1770, and it devolved on the legislature, which met after two postponements, on September 25, 1770, to prepare a new act or extend the old one for a further period.

As Mr. Lloyd had died during the recess, Edward Tilghman was chosen Speaker. The House, showing great zeal in the public service, voted it would meet daily at 8 A. M., instead of at 9, as at the last session. Governor Eden opened the session with an address,<sup>2</sup> in which he referred to the regulation of Indian affairs, to the want of precision in the criminal law and to the desirability of uniting with Virginia in erecting a lighthouse on Cape Henry. Three days after the opening of the session, Messrs. Bordley, Ringgold and Chase were appointed a committee to bring in a bill "for amending the staple of tobacco, for preventing frauds in His Majesty's customs and for the limitation of officers' fees." These different subjects had been included in the bill just expiring, and the Lower House refused to take any away lest their power to accomplish their main object should be weakened. The committee was enlarged, and its report was taken up by the committee of the whole, which discussed it for about two weeks. The investigations showed that affairs sadly needed reform. The Secretary's fees in chancery amounted to 42,098½ pounds tobacco in 1769, and from his fees in the Provincial Court he received 244,990 pounds more. The commissary's office showed a receipt of 280,000 pounds in that year, and the clerk in the Land Office had received 382,600½ pounds. One service was divided into several for increasing fees, from which those officers obtained their remuneration, as they had no salaries. McMahon estimates the yearly remuneration of the Secretary as nearly \$4500, that of the Commissary-General as nearly \$7000, and

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<sup>1</sup> McMahon, *History of Maryland*, p. 382.

<sup>2</sup> *Journal*, p. 258. The answer was purely formal. *Md. Gaz.*, Oct. 4, 1770.

that of the judges of the Land Office as nearly \$4000. These were extremely lucrative posts for that time in this country. The commutation of fees, too, was not sufficiently extensive to suit those who did not raise tobacco, which was the original currency and still the only one receivable in certain cases.<sup>1</sup> The value of the tobacco raised by the planters lay largely in the official inspection by provincial authorities, whose seal of approval was regarded as proof of the excellence of the product. This system of inspection was provided for by the same bill in which the officers' fees were stated. The State Church, also, depended largely upon the bill, by whose provision every "taxable," that is, a male of full age, was obliged to pay thirty pounds of tobacco yearly to the support of the Anglican Church.

On October 17 an act passed<sup>2</sup> the Lower House reducing many of the fees and allowing a composition in money in all cases. The Upper House kept the bill five days and then returned it, refusing to concur without amendments. When the Lower House received this answer, which they must have known was coming, they passed resolutions on November 1 reaffirming the resolutions passed in 1739, during an earlier quarrel about the fees, declaring that these fees are now "excessive, great and oppressive to the subject and are under no regulation of any law of this province." The previous bill had now expired, and they claim there are now no legal fees, and that those raised otherwise than by law

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<sup>1</sup> McMahon, pp. 381 ff. Proclamation claimed to put planters and farmers on same basis in this respect (vide John Hammond in *Md. Gazette*, Sept. 9, 1773). "A particular period in each year was assigned, within which the fees were to be delivered to the sheriff and by him to the party charged for voluntary payment. If that period was suffered to elapse, the sheriff was required to levy them by process of execution and account for them to the officers within another assigned period. Commutation was fixed at the rate of a penny a pound of tobacco or 12s. 6d. per cwt.

<sup>2</sup> *Journal*, p. 279,



are arbitrary, unconstitutional and oppressive, unless fixed by a jury of the vicinage.<sup>1</sup>

They claim that Marylanders are entitled to the "rights and liberties of the subjects in our mother country" to the customs, common law and "securitive statutes" of England. Fees, the resolutions state, are only another form of taxes, and hence should be laid only by the Assembly in Maryland and by Parliament in England, and taxes otherwise imposed are "invasions on the fundamental constitution of this province."<sup>2</sup> The strong words of their resolves were called forth by an aggressive act on the part of the judges of the Land Office. They had directed their clerk to collect the same fees he had received while the act was in force. This he did, and for this "high contempt" of the Lower House that body ordered him to be kept "safe and close" during its pleasure. Eden, acting on the advice of the Council, immediately prorogued the Assembly for three days, which had the effect of releasing the prisoner at once. On coming together again on November 5 the minds of the members of the Assembly were incensed by this sudden prorogation, as well as by the quarrel over the fees. As a consequence that body shortly prepared an address<sup>3</sup> and sent it to the Governor, protesting against the prorogation in frank and audacious words.<sup>4</sup> They tell him "the Proprietor has no rights, sir, either by himself or with the advice of his Council, to establish or regulate fees of officers, and could we persuade ourselves that you could possibly entertain a different opinion we should be bold to tell your Excellency that the people of this province will ever oppose the usurpation of such a right." The attempt of the registers of the Land Office to

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<sup>1</sup> Journal, pp. 286, 301.

<sup>2</sup> Journal, p. 302.

<sup>3</sup> Journal, p. 311.

<sup>4</sup> Carroll, March 11, 1773, in *Md. Gazette*, says the Lower House feared a proclamation, which would be "incompatible with the permanent security of property and the constitutional liberties of the subject," and this fear caused them to word the address thus.

regulate fees by a proclamation, when the Assembly was engaged in deliberating upon a fee bill, they consider an insult, with some reason, and ask Eden to express to them his disapprobation of such conduct, and, if it be repeated, to remove the offenders from office.

The Upper House had already proposed a conference over the bill which was pending in the Assembly, having been passed again by the Lower House on the day after its reassembling. This request was agreed to by the Lower House,<sup>1</sup> provided the Upper one first send a list of the amendments it desired. These the Upper House indicated in general,<sup>2</sup> but declined to go into particulars. Among other things they suggest a salary of £600 sterling, in lieu of fees, to the Secretary, Commissary-General and judges of the Land Office, while keeping the table of fees the same as previously. With all of the Upper House amendments the Lower one disagreed,<sup>3</sup> making the rather singular objection to the proposition to fix salaries that these would render officers less diligent.

We feel that both parties were losing any desire for conciliation. The Lower House said they were willing to go into conference, to which the Upper replied that if it was predetermined that all the amendments would be rejected they did not care to prolong the session.<sup>4</sup> The Lower House then offered to separate the different parts of the bill<sup>5</sup> and pass all but the part relating to officers' fees.<sup>6</sup> By this the regulation of the staple tobacco, the payment of the clergy and the lawyers, and provincial, county and parochial charges would all be provided for. By refusing this, and stating that they would only consent to correct abuses in the old system, the Upper House clearly put itself in the

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<sup>1</sup> Journal, p. 313.

<sup>2</sup> Journal, p. 316.

<sup>3</sup> Journal, p. 319.

<sup>4</sup> Journal, p. 320.

<sup>5</sup> Journal, p. 322.

<sup>6</sup> Done in 1774.

wrong and laid itself open to attack.<sup>1</sup> The Lower House on receiving this message, by a close vote,<sup>2</sup> resolved to send to the Upper House queries as to certain things which they considered as abuses and concerning which they wished to know the opinion of their antagonists. Here the Lower House laid themselves open to attack from the side of parliamentary law, and the Upper House, taking advantage of this, declined to answer the queries, which should properly come before a conference committee. With this answer they returned the bill unapproved.<sup>3</sup> There was no hope of a compromise, and Eden prepared to prorogue the Assembly, which he did from November 21 until December 11. Before the prorogation, however, Eden transmitted a reply to the address sent him by the Lower House early in the session. He informs them<sup>4</sup> he had prorogued the Assembly for three days on the advice of his Council, that "a short recess might be productive of sedate reflection." The offense of the clerk of the Land Office, if any, should have been prosecuted in the courts, where he might have had protection of law, judge and jury. He regretted the spirit of this address, and informs them that while it is his duty to avoid every occasion of reasonable complaint, it is also his duty to check the exercise of such powers as are incompatible with the indubitable authority of government, the permanent security of property and the constitutional liberty of the subject. It is an unusual position for an English Governor of the period to take, and yet one where Eden had at least a plausible basis.

Eden makes the point that the Land Office registers made no proclamation, but only preserved the old rate, which seemed equitable from its existence for twenty-three years. He claims that the Land Office is, at any rate, rather a pri-

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<sup>1</sup> Journal, p. 324.

<sup>2</sup> 22 to 19, Journal, p. 326.

<sup>3</sup> Journal, p. 333.

<sup>4</sup> Journal, p. 335.

vate<sup>1</sup> than a public one; for, surely, Lord Baltimore has right to dispose as he will of his land and to settle the rewards of the officers who attend to such sale. He assures them "that his Lordship's authority had not yet been interposed in the regulation of fees of officers, nor had he any reason to imagine it would interpose in such a manner as to justify a regular opposition to it." This statement was remembered against him by the opposition.<sup>2</sup> Eden speaks of the necessity of the balance of counteracting powers "for the protection of the people and the preservation of the public peace," and assures them "that I will on every occasion pay a due regard to your rights, that I shall never countenance the illegal exactions of any officer, nor submit to any usurpation which may essentially endanger that constitutional balance of counteracting powers so necessary for the protection of the people and preservation of the public peace."

Several acts of this session were approved by the Governor, among them one erecting Eden parish in Western Maryland.<sup>3</sup> But though this token of regard was given him, in the resolutions the Lower House passed the last day of the session his councillors are severely scored for manifesting "an unreasonable attachment to the emoluments of office"<sup>4</sup> and for having an "unjustifiable design to force this branch of the legislature into a regulation of fees more correspondent to those schemes of wealth and power" which they have formed.<sup>5</sup>

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<sup>1</sup> The careful way in which the Provisional Government later dealt with the Land Office shows how strong this idea was.

<sup>2</sup> *Maryland Gazette*, March 11, 1773. The legislature complain of this in 1771.

<sup>3</sup> Laws of 1770, ch. IX., *Maryland Gazette*, Dec. 22, 1770, contains a poem on Christmas dedicated to Eden.

<sup>4</sup> *Maryland Gazette*, Nov. 22, 1770.

<sup>5</sup> In *Maryland Gazette*, Nov. 29, 1770. Register of Commissary General and Clerk of Provincial Court publish affidavits that they have taken no unlawful fees.

A very few days after the adjournment of the Assembly<sup>1</sup> the Governor issued his famous proclamation. This document was quite artfully framed; it did not profess to fix any fees whatever, but strictly prohibited any officer from taking a greater fee than allowed by the act of 1763. Of course, *e converso*, the taking of a fee equal to that allowed previously was approved of and would be sanctioned, though technically Eden escapes the charge of making a table of fees.<sup>2</sup> At first little was written about the proclamation. Eight of the most prominent lawyers of Anne Arundel county had already stated that they would receive fees, either in tobacco or money, at the rate of ten shillings per 100 pounds, and had been thanked by the grand jury therefor.<sup>3</sup> Revs. Bennet Allen and Thomas Chase published notices to the same effect, but they were not thanked, for, by the expiration of the old act of 1763, the act of 1702 came into effect, which increased the poll tax from thirty to forty pounds per poll, and this increase the clergy showed no disposition to give up.<sup>4</sup>

Shortly after the beginning of December the planters of Charles county resolved to have a private inspection of their staple, to prevent by this the exportation of "Virginia trash for Maryland tobacco."<sup>5</sup> This example proved a popular one and was immediately followed by the planters of Queen Anne's and later by those of Prince George's and Anne Arundel.<sup>6</sup>

In December Eden dissolved the Assembly and issued writs for the election of a new one to meet in February; but, ere that date had come, prorogued it until October. His motives in doing so were questioned, and it was held by some that the prorogation was intended to call forth a peti-

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<sup>1</sup> Nov. 26, 1770.

<sup>2</sup> *Maryland Gazette*, Dec. 13, 1770.

<sup>3</sup> *Maryland Gazette*, Nov. 18, 5, 1770.

<sup>4</sup> *Maryland Gazette*, Nov. 22, 1770, Jan. 3, 1771.

<sup>5</sup> *Maryland Gazette*, Dec. 6, 1770, Dec. 13, 1770.

<sup>6</sup> *Maryland Gazette*, Feb. 21, 1771, Mch. 28, 1771.



tion for an earlier meeting, which would imply "too great fondness" for the inspection law or groundless fear of officers.<sup>1</sup>

There is little wonder that Eden wrote<sup>2</sup> to Hillsborough that he could not boast of great harmony during the last two sessions. In order to win over supporters to the Proprietary's party and make the next session more harmonious communications from the Governor's supporters now appear in the *Maryland Gazette*.<sup>3</sup> Four of these appeared before there was a reply. They are all well written and show keenness in perception of the weak points of the popular cause, attacking among other things the fees of the lawyers,<sup>4</sup> who were mostly of the popular party, and the action of the Lower House in ordering fees to be paid to it.<sup>5</sup>

The province was not yet thoroughly aroused for either side, and the Governor could find time to attend frequently the performances of the American Company, whose actors were "equal at least," writes Eddis to an English friend, "to those who sustain the best of the first characters in your most celebrated provincial theatres."<sup>6</sup> This company came in January, 1771, and during its stay in Annapolis so charmed the people that a new theatre was immediately erected against their return.<sup>7</sup> In this enterprise the Governor was prominent "from a strong conviction that the stage under proper regulations may be rendered of general utility and made subservient to the great interests of religion and

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<sup>1</sup> *Maryland Gazette*, Feb. 7, 1771.

<sup>2</sup> April 4, 1771.

<sup>3</sup> March 7, 1771, May 2, 1771, June 20, 1771, June 27, 1771.

<sup>4</sup> "More truly burdensome and expensive to Maryland than all the other orders of the community put together."

<sup>5</sup> Aug. 4, 1771. Eden writes to Lord Hillsborough, giving his congratulations on the birth of a prince and on the suppression of the "late dangerous insurrection of the Regulators in North Carolina," a colony whose "back parts are infested with all sorts of lawless vagabonds." He also speaks of Indian trade. The letter was answered on Dec. 4.

<sup>6</sup> Eddis, p. 94.

<sup>7</sup> Opened on September 9, 1771.

virtue." Of the private life of Eden during the year we know but little, though we get glimpses from the *Maryland Gazette* of the successful inoculation of his two younger children<sup>1</sup> "in spite of inclement weather," of the theft of his whale boat by unknown parties,<sup>2</sup> and of a two months' visit during the summer from his brother, Thomas Eden, who took Mrs. Eden with him as far as New York on his return.<sup>3</sup> From this time on Thomas Eden, with his vessel the "Annapolis," made yearly trips from England to Maryland, bringing the planters the supplies they needed and taking back tobacco.<sup>4</sup>

## CHAPTER V.

### THE PROCLAMATION.

McMahon writes<sup>5</sup> of this document as follows: "From the first appearance of the proclamation<sup>6</sup> it aroused in hostility to it the great body of the people, with a spirit not to be seduced from resistance by the influence of talents, the

<sup>1</sup> Feb. 28, 1771. The youngest was only eight months old.

<sup>2</sup> Aug. 8, 1771.

<sup>3</sup> July 27 and Sept. 26, 1771.

<sup>4</sup> Vide Apr. 23, 1772.

<sup>5</sup> History of Md., p. 385.

<sup>6</sup> The Proclamation<sup>a</sup> is of such importance that it is worth being quoted in full: "Being desirous to prevent any oppressions and extortions from being committed under color of office, by any of the officers and ministers of this Province, and every of them, their deputies or substitutes in exacting unreasonable and excessive fees from the good people thereof, I have thought fit, with the advice of his Lordship's Council of State, to issue this, my Proclamation; and I do hereby order and direct, that, from and after the publication thereof, no officer or officers (the Judges of the Land Office excepted, who are subject to other regulations to them given in charge<sup>b</sup>), their deputies or substitutes, by reason or color of his or their office or offices, have, receive, demand or take of any person or persons, directly or indirectly, any other or greater fees than by an Act of Assembly of this Province, entitled An Act for amending the staple of tobacco, for preventing frauds in his Majesty's customs, and for

menaces of power or the soothings of official patronage. Never was a measure of internal policy more thoroughly investigated and discussed. Parties were formed upon it and drew to their aid every man of influence and abilities in the province. The Governor and his courtiers, the officers and their adherents and the established clergy were arrayed against the great body of the people, sustained and led on in opposition by the great body of the lawyers." The steadfastness of the Governor and of the people continued so long that the legality of the proclamation and of the acts done under it remained an unsettled question down to the end of the Proprietary government. Though most of the prominent lawyers were opposed to the Governor, he had strong supporters in that profession, and from the very outbreak of the struggle between prerogative and privilege in Maryland it was a lawyer's battle, wherein the antagonists showed great knowledge of English precedents. As lawyers, the leaders deprecated violent steps and wished everything to be done in due form. This fact, together with the wisdom and moderation of Eden, caused the Revolution to come gradually and peacefully in Maryland, in strong contrast to the course of events in neighboring provinces and colonies.

The controversy over the proclamation and the regulation of fees broke out with fresh virulence on the meeting of the General Assembly on October 2, 1771. This new Assembly was no better inclined towards the Governor's plans than the

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the limitations of Officer's Fees, were limited or allowed; or take or receive of any person or persons, on immediate payment (in case payment shall be made in money), any larger fee than after the rate of 12s. and 6d., common current money, for 100 pounds of tobacco, under the pain of my displeasure; and, to the intent that all persons concerned may have due notice thereof, I do strictly charge and require the several sheriff's of this Province to make this, my Proclamation, public in their respective counties in the usual manner, as they shall answer the contrary at their peril."

(a) *Maryland Gazette*, Feb. 18, 1773.

(b) Instructions of November 24, 1770, under Great Seal for Fees of the Land Office.

former one had been. They claimed that the weight of precedent was against such a proclamation, that there was no charter power under which it could be sheltered, and that, by defeating the purposes of the Lower House in adopting a measure they refused, it was an act of arbitrary prerogative and an usurpation of the right of taxation.<sup>1</sup>

In the midst of the bitterest quarrels between the executive and the legislature, it is remarkable that so little personal animosity was aroused. McMahon well sums up the matter<sup>2</sup> in saying of Eden and his administration: "His unadvised proclamation, although ascribed to the councils of others, was of itself sufficient to have rendered him odious to the great body of the people. Yet, in the midst of all the commotions of the province, and even whilst his own measures were exciting general indignation, he seems to have been respected, nay even beloved." The reason for this condition of things, seemingly so strange, cannot be better stated than by quoting again McMahon's words: "Easy of access, courteous to all and fascinating by his accomplishments, he still retained his hold upon the affections even of his opponents, who, for the qualities of his heart and the graces of his manner, were willing to forgive the personal errors of his government."

On October 2, 1771, Eden opened the new Legislature<sup>3</sup> with an address, in which he carefully avoided all reference to the proclamation or the inspection law. He urged reforms in the criminal law, a contribution towards aiding Virginia in building a lighthouse on Cape Henry, and proclaimed himself an advocate of good roads. On the latter question he spoke thus: "The provision hitherto made for repairing and keeping in order the publick roads having

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<sup>1</sup> vide McMahon, p. 381, ff.

<sup>2</sup> History of Md., p. 434. McMahon must have known many who had a personal acquaintance with Eden.

<sup>3</sup> At this session two delegates from Charles County were unseated for "treating."

proved very ineffectual, let me also beg your peculiar regard to this subject. Our situation for commerce has many natural advantages, which will be diminished or improved in proportion to our neglect or care in shortening distances and facilitating the carriage of our native produce to market." He closes his address with the assurance of "my most cheerful concurrence in every measure tending to promote the real interest of this country, and that I shall deem myself happy in proportion to the prosperity the people of this province shall derive from my administration."

To this address both Houses made cordial response, and in acknowledging the response of the Lower House Eden reasserts the position above taken, by telling them that his "recommendations shall never point anything to your consideration that does not strike me as an object really conducive to the welfare of the province and the happiness of the people."

The new State-house not being ready, the Assembly met in the coffee-house, at first, and afterwards in the ballroom. In the former place, on the second day of the session, the Lower House unanimously adopted resolves which told in ringing words of their fixed determination to resist all unjust claims of England. They declared that this province is not under the circumstances of a conquered country; that, if it were, the present Christian inhabitants thereof would be in the circumstances, not of the conquered, but of the conqueror, they being a colony of the English nation, encouraged by the Crown to transplant themselves hither for the sake of improving and enlarging its dominions, which, by the blessing of God upon their endeavor, has been in great measure obtained, at their own expense and labor. It is unanimously resolved<sup>1</sup> that whosoever shall advance the

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<sup>1</sup> Another resolution of the series deals with the relation of the colonists to the Indians. "Resolved also that, if there be any pretence of conquest it can only be supposed against the native Indian Infidels, which supposition cannot be admitted, because the Christian inhabitants purchased great part of the land they at first took up from



proposition that His Majesty's subjects, by such their endeavors and success, have forfeited any part of their English liberties, are enemies to the province and mistake its happy constitution.

Other resolutions claimed "that this Province hath always hitherto had the Common Law and such general statutes of England as are securitative of the rights and liberties of the subject, and such acts of assembly as were made in the Province to suit its particular constitution, as the rule and standard of its government and judicature," and denounced the tax of a shilling per hogshead on exported tobacco as illegal.

The Lower House declined to go into the general revision of the criminal law,<sup>1</sup> but agreed to discuss any specific defects therein and ask Eden to mention any defects he has found. He answers, in an able paper, complaining that at present there is not "any precise, invariable rule established by which the extent of the penal statutes of England may be ascertained." It is doubtful which statutes are suitable to this country, and to leave that question for decision to the judges would destroy the uniformity of the laws. He further questioned whether the existing English law be not "too undistinguishing and too sanguinary." The Legislature, however, did not take up the matter.

At this session the Lower House, with one dissenting voice, passed a bill for a tax of fourpence per hogshead of tobacco for the support of a provincial agent at London, but the Upper House rejected the bill.<sup>2</sup>

The two Houses soon showed an irreconcilable difference on the question of fees. The Upper House steadfastly in-

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the Indians, as well as from the Lord Proprietary, and have ever since continued in an amicable course of trade with them, except some partial outrages and skirmishes, which never amounted to a general conquest, the Indians yet enjoying all their rights and privileges of treaties and trade with the English."

<sup>1</sup> Proceedings, Oct. 9, L. H., 24, 25.

<sup>2</sup> Proceedings, L. H. Nov. 5, U. H., Nov. 29, 1771.

sisted on the old table. The Lower one, with equal steadfastness, insisted on a new one, being ably led in this contention by Edward Tilghman, their speaker.<sup>1</sup>

On October 10 the Lower House summoned certain county surveyors to attend and answer for recovering from the people of this province fees, illegal and oppressive, and not warranted by the late regulation, nor by any law of the province. The same day the Committee of Aggrievances and Courts of Justice reported that fees are in themselves, as now paid, excessive, great and oppressive to the subject and are exacted under no regulation of any law, but by virtue of "some proclamation."<sup>2</sup>

The House at once appointed a committee to bring in a bill for regulating the staple of tobacco and the amount of fees. The committee's report was read on October 14, and, three days later, the sheriff of Anne Arundel county and the clerk of the Land Office were ordered to appear with Eden's proclamations. This they did, and the documents were spread on the records. On October 18 the House had read to it the resolves it had passed on November 1, 1770, the statute *de tallagio non concedendo*,<sup>3</sup> the Bill of Rights of 1689,<sup>4</sup> the eighth section of the provincial charter, and the early provincial statute providing that no money be raised within the province without the consent of the Assembly.<sup>5</sup> They passed the new bill for regulating fees and the inspection of tobacco, and resolved unanimously that the representatives of the freemen of this province, with the assent of the other part of the Legislature, have the sole right to impose and

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<sup>1</sup> Vide *Maryland Gazette*, June 20, 1771. Other popular leaders were Samuel Chase, Wm. Paca, Chas. Graham of Calvert, John Hall of Annapolis, and Thos. Johnson, Jr. McMahon, p. 394.

<sup>2</sup> On Oct. 21, one of these was discharged. On Oct. 27, another was reprimanded, ordered to pay costs, and when refused, committed to the custody of the sergeant at arms.

<sup>3</sup> 34, Ed. I., ch. I.

<sup>4</sup> I. W. and M., ch. 2.

<sup>5</sup> Act of Apr. 29, 1650.

establish taxes and fees, and to attempt to do this under color of a proclamation, issued in the names of the Proprietary, is arbitrary, unconstitutional and oppressive.

Further resolves denounce Eden's proclamation, and claim that where no fee is established by law an officer should sue for the value of his services, the amount to be fixed by a jury. Finally, the House resolved "that the advisers of the Proprietary are enemies to the peace, welfare and happiness of this province and of the laws and constitution thereof." The last resolve had three negative votes; the first passed without a dissenting voice.<sup>1</sup> The bill was taken at once to the Upper House and rejected by that body on October 30, as "many parts in it" are "of such a nature as cannot with any reason or justice be passed as they now stand." They ask for a conference on the subject.<sup>2</sup> The Lower House agreed to this proposition by a vote of twenty-eight to nineteen.<sup>3</sup> In the minority were the prominent patriot leaders, Paca, Chase, Tilghman, Smallwood and Johnson.

Another complication had arisen.<sup>4</sup> The Lower House decided by a vote of twenty-two to sixteen on October 16 to offer the clergy thirty-two pounds of tobacco per poll, instead of thirty, if the amount were compounded for in money. This was in the nature of a compromise, and, for the time, it looked as if the Upper House would accept it; but on November 1 Eden wrote to that body that if such a regulation were established, "many ministers, who now have but a scanty provision, would be reduced to a state of much indigence and distress," and, therefore, he will not assent to it. He tells them he does not know that such intimation of the Governor's purpose is usual in advance of the passage of a bill, but hopes it will be found "agreeable to the character

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<sup>1</sup> Wm. Richardson, Ennalls (both of Dorchester) and Hall.

<sup>2</sup> Conferees for U. H.: Calvert, D. Dulany, Ridout, Bordley, Hayward.

<sup>3</sup> Conferees for L. H.: Grahame, Tilghman, Johnson, Chase, Hall, Hammond and Dennis.

<sup>4</sup> Proceedings, Oct. 10.

of candour." This letter caused the Upper House to withdraw any concession.<sup>1</sup> On November 8 the Lower House gave leave to bring in a bill for the maintenance of the clergy. It was reported on the 9th, passed on the 19th by a vote of twenty-five to eight,<sup>2</sup> amended by the Upper House on the 21st, and finally assented to by Eden on the 23d.

The provisions of this act<sup>3</sup> are "singular and curious." They require every minister, within four months after induction, to take oaths to the government and an oath "that he has made no simoniacal contract for his benefice." If he neglect to take these oaths, or be found guilty of any such contract, he shall be adjudged as disabled to hold any living whatever. If he be absent from his parish for one entire month or for two months at different times in any one year he shall forfeit £10 sterling to the use of the parish.

Upon a complaint in writing made by a majority of the vestrymen and wardens to the Governor and Council setting forth that the incumbent hath wilfully neglected to officiate or hath been guilty of scandalous immorality, the Governor, by the advice of the Council, may appoint three beneficed clergymen and three laymen, who, together with the Governor, or the senior member of the Church of England in the Council, if the Governor be not of that church, shall sit as a tribunal on this case. The grand jury must endorse the complaint, before the special tribunal may hear it. The sentence may be to admonish, to suspend, or totally to deprive of office, and the offender may further be required to pay costs. This regulation of the conduct of the provincial clergy was to endure for seven years. I know of no action taken under it, and its life was ended with that of the State church. As will be seen, it was an act for the regulation of the clergy, not for their maintenance.

The conference did not go on at all smoothly. On No-

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<sup>1</sup> Proceedings, Nov. 7, 1771.

<sup>2</sup> Chase and Tilghman in the negative.

<sup>3</sup> Act of 1771, ch. 31.

vember 4 the Upper House submitted a list of propositions, which were considered and partly accepted by the Lower. A second list of propositions was sent down on the 6th, rejected by the Lower House at once, and a request sent by the latter body that the conference now end.<sup>1</sup> It was continued, however, though, on the 11th, the Upper House also asked that it end. Propositions were sent to and fro. On the 11th the Lower House specified the abuses it found in the old fee table first adopted in 1747. On the 19th the Lower House, by a vote of thirteen to twenty-three, again rejected the Upper House propositions, and, finally, on the 22d, a paper was sent by the Lower House definitely breaking off the conference. The next day the whole Lower House, save three members, who voted against such action, presented an address to Eden defending their position.

The last act of the drama had come. The Upper House again rejected the fee bill on the 25th, and on the 28th the Lower House requested a prorogation of the session.

The attempt to compromise the difficulties had failed.<sup>2</sup> On November 26 the Upper House conferees sent a bitter letter to the Lower House, in answer to which they retort as follows: "A particular answer to your illiberal language cannot be productive of any public good, and not being disposed to attempt a rivalry with your Honours in the talents for petulance and impertinent invective, the Lower House have ordered an end put to this conference."

The address<sup>3</sup> presented to the Lower House to the Governor refers to the proclamation as "unconstitutional in the

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<sup>1</sup> Votestood 27 to 17. All popular leaders but Paca were in negative.

<sup>2</sup> Another bill much desired by the Lower House at this session, but rejected by the Upper, was one to authorize the emission of bills of credit. This bill included an appropriation, seemingly provisional only, for the establishment of a seminary of learning. The Lower House, in this connection, on Nov. 16, strongly protested against the amendment of money bills by the Upper House.

<sup>3</sup> T. Johnson, Jr., presented the address to the Governor. McMahon, p. 394.



matter and shadowed in the manner, with the assigned reason to prevent extortion by the officers, in imitation of the practice of arbitrary kings, who, in their proclamations, which have been declared illegal, generally covered their designs with the specious pretence of public good." This warm language shows the extent to which men's minds were aroused. According to this address, the most important question was as to whether the Land Office was a public or private one. The Assembly admits that the lands may be disposed of, according to the charter, by Lord Baltimore "upon such reasonable terms as he might think proper," and that he may "direct formal observances in making title to his grants, so as to further the increase and settlement of the province;" yet they claim that "after the publication of the conditions of plantations, that which before was uncertain, and to be governed by what was reasonable, was thereby ascertained and a permanent interest vested in the subject, which cannot be rescinded by the Proprietary at his pleasure." They proceed to tell Eden that "the Land Office, sir, is the public repository of the first and most necessary evidence of every man's title to his real estate in this province; the whole records have been made up, so far as we can trace, at the expense of the people. Those records have been considered as public records, kept under securities appointed by acts of Assembly, and office copies are constantly received and admitted as evidence by the courts of justice."

It is difficult to resist the force of this reasoning. They go further and quote against Eden his own words, that "a right to determine the charges of fees excessive, implies the right to settle the exact compensation due for the services performed." Therefore, they say, as Eden had declared the greater fees excessive, he has also claimed the latter right.

In support of their position they quote from Coke's Institutes and the statute *de tallagio non concedendo* to prove that fees of office are a tax upon the subject, and urge that the officers of justice were paid by the common law from the Crown revenues and that no fees were levied by proclama-

tion of England. The charter of the province supports the popular cause, inasmuch as it provides that laws are only to be made with the assent of the freemen. In 1692 the Lower House had voted that the Assembly alone could impose fees, and the result of the long struggle from 1733 to 1747 had been a recognition of that principle. "Applications to public officers," they state, "are not of choice, but of necessity." If the prerogative may "rightfully regulate the fees" to be paid for such application, "agreeable to the late inspection law, it has a right to fix any other quantum; if it has a *right* to regulate to *one penny*, it has a *right* to regulate to a *million*, for where does its right stop? At any given point? To attempt to limit its right, after granting it to exist at all, is contrary to reason, and granting it to exist at all is contrary to justice." The masterly logic of this address reminds us of that used by Marshall in his decision in the case of *McCulloch versus Maryland*, and is one of the many proofs of the thorough legal education of the patriotic leaders in the province.

In closing, the delegates tell the Governor that not only was the old law "in some particulars exorbitant," but also was so vague that "many abuses had been committed by the officers in their charges, which could be palliated only from the doubtfulness of the expressions in the tables." They appeal to Eden to withdraw the proclamation, which they feel sure was issued on the advice of others, whose names they beg him to disclose. Thus strongly and skillfully was the case stated for the people.

Eden was not less skillful in his answer, dated November 29, 1771, which set forth the side of the Proprietary in the best possible light. He is evidently considerably offended by the tone of the paper sent him by the House, and refers to it as an "extraordinary address, dictated by a spirit to excite popular animosity." "The sentiments you have expressed against my proclamation have proceeded," in Eden's opinion, "from your persuasion of its having been calculated to prevent litigation and secure the public peace, and

your apprehension, if left to its proper effect, would extinguish the discontent you took so much pains to kindle." A direct attack is made upon the Lower House. Their treatment of the clerk of the Land Office,<sup>1</sup> by committing him to be kept safe and close to await their pleasure, was worse than the acts of a highwayman; the payment of fees to the officers of the Lower House, under pain of imprisonment, is complained of and Eden asks on what principle the Speaker and clerk receive an allowance on the passage of private bills.

Having thus shown his indignation, he next turns to argument, and, in the first place, shows that the jury trial on a *quantum meruit*, which the popular party urge as the true remedy for officers, is merely a pretence, as small fees could not thus be sued for, since a debt had to amount to 600 pounds of tobacco or fifty shillings currency before a jury could decide upon it. He makes the old claim that there must be some power to curb demands of the officers and prevent extortion, defends his advisers and takes the responsibility upon himself.

He next takes up the historical argument. In 1633 the officers appointed by Lord Baltimore were authorized by him to take the same fees as were legal in Virginia; in 1642 the Governor and Council published a fee table; in 1676 the Assembly, in passing an act for fees, provided that fees not therein mentioned should be fixed by the Proprietary and his Council, and temporary acts of 1692 and subsequent years contained the same provision. The Proprietary had royal prerogatives.<sup>2</sup> If the King can settle provincial fees, so can Lord Baltimore, and it is well known that the royal Governors of Maryland were authorized by their commission to settle officers' fees. In Governor Hart's administration, when the fee bill expired, he directed the keeper of the seal

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<sup>1</sup> Wm. Steuart.

<sup>2</sup> It is interesting to note that the Maryland Courts, since the Revolution, have decided against this view.

to affix it to no paper, until the fee be paid according to the former law, and, during the struggle over fees from 1733 to 1747, fees were regulated in Maryland by proclamation of the Governor. Having heaped up such a formidable array of precedents, Eden takes up the question of the Land Office, which he claims to be quasi-public only.<sup>1</sup> The conditions of plantation, he remarks, have greatly varied from time to time.

He next informs the Lower House as to his motives in issuing the proclamation; that he did not determine so to do "till after the most mature consideration; it appeared to me to be a measure not only lawful, but necessary; not only what I might, but what I ought to pursue. The framers of your resolves have indeed censured it in outrageous terms of resentment, and I am not without suspicion the great benefits of an inspection law have been given up that clamor and dissension might succeed; but I have reason to believe most thinking and dispassionate men approve of an interposition calculated to promote the peace and tranquillity and, consequently, the happiness of the people." As to his advisers, he says: "Whom am I to consult and whom to exclude from my confidence, I must not suffer you to direct, however ardently some of you may wish it, nor shall any man have the least pretence to reproach me with the dishonour of having betrayed, with the smallest appearance, his confidence."

In conclusion, Eden returns to the propriety of his proclamation, saying: "So clear is my conviction of the propriety and utility of a regulation to prevent extortion and infinite litigation that, instead of recalling it, if it was necessary to enforce it, I should renew my proclamation, and, in stronger terms, threaten all officers with my displeasure

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<sup>1</sup>Sept. 9, 1773, in a very able article in the *Maryland Gazette*, Johnson, Paca and Chase refer to this controversy, and claim that Eden virtually admitted the claim of the Legislature as to the Land Office.

who shall presume to ask or receive of the people any fee beyond my instructions.”<sup>1</sup>

The day after writing this response Eden prorogued the Assembly until February 18. The record of its work on the statute book was not a long one. It had passed an important statute with reference to the naturalization of foreigners,<sup>2</sup> but the most of its laws dealt with such subjects as the prevention of the “exportation of flour, staves and shingles not merchantable from Baltimore county,”<sup>3</sup> and the regulation of the “weight of hay and measures of grain, salt, flaxseed and firewood in that county.”<sup>4</sup> Through the controversy the more important measures had failed.

Eden, in his closing speech to the Assembly,<sup>5</sup> regretting that, because the season is so far advanced, they cannot consider the measures he advised, complains of “the vast loss of time to yourselves and the great expense of money to the country which have accrued this session, and the very little business that has been done at it.” He had “flattered” himself “that the inspection act would be re-enacted.” “However it has happened” that the fee table which they urged upon the Proprietary almost against his will in 1755 should now be so distasteful to them, he does not “undertake absolutely to pronounce.” He, however, suggests that this “present disappointment” is due “to the flame you were blown into at the opening of the session, by the mistaken construction or explanation of a proclamation issued by me solely for the benefit of the people of this province, by nine-

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<sup>1</sup> Not a word of this conference, or of these important State papers, is found in the *Maryland Gazette*.

<sup>2</sup> Act of 1771, ch. 1.

<sup>3</sup> We see that even in Provincial days that special legislation, which is one of the great defects in Maryland law-making, had begun.

<sup>4</sup> Act of 1771, ch. 15, 20. An act proposed allowing clergy to be tried by laymen for spiritual offenses was protested against in *Maryland Gazette*, Nov. 28, 1771.

<sup>5</sup> Baltimore having died before the end of the session, there was some doubt as to the legality of the laws then passed, and they were affirmed in June, 1773.



tents of whom I have the greatest reason to think it was so understood." In a reproachful manner, he adds "that I sincerely wish the same zeal for the service of the province which has all along actuated my conduct was diffused amongst others, and it is not now too much to hope it may be so hereafter." In closing, he affirms his steadfastness in maintaining the proclamation. "His Lordship's officers throughout the province are thoroughly acquainted with my sentiments and the consequences of any disobedience of the orders issued by me with respect to any imposition on or extortion from the people during the want of an inspection law. I am, therefore, under no necessity of repeating the proclamation on that head, otherwise, notwithstanding your address, I most certainly should do what I think my duty in the situation I am placed requires, and whilst I continue therein, I hope my actions will ever evince that the prosperity of the province is the first object of my wishes."<sup>1</sup>

For nearly two years now there was no meeting of the Assembly, and people either paid fees under protest, according to the old law, or refused to pay any. The popular theory was that, no fees being established by law, "the power of ascertaining the *quantum* of the reward is constitutionally in a jury upon the action of the party;"<sup>2</sup> but it is probable in most cases the government theory was successfully adhered to by the officers.

## CHAPTER VI.

### THE DIFFICULTIES OF THE CLERGY.

The clergy seem at some times to have excited more attention than the secular officers of government. They had difficulties among themselves on the Eastern Shore during

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<sup>1</sup> The Legislature appropriated £50 for the entertainment of a delegation of Delaware, Munsie and Mohegan Indians at this session.

<sup>2</sup> *Maryland Gazette*, Sept. 9, 1773.

the summer of 1771 which filled several columns of the *Maryland Gazette*.<sup>1</sup> In the autumn we find in that paper a long letter from an Eastern Shore clergyman complaining of injustice and the loss the clergy were suffering through being paid in paper currency instead of tobacco. He tells his readers that the rich will chiefly profit by the change, that the clergy are gentlemen and must live differently from laboring men.<sup>2</sup> If they live as the latter they will be despised and their profession brought into contempt. With their former salaries they could not lay anything by, and with the diminished pay not only will they be impoverished, but the division of several parishes, which is very desirable, will be indefinitely postponed. The loss which the province has already sustained from want of an inspection law far overbalances all that could be saved in many years by the projected regulations.

The clergy petitioned Eden's favor on October 5, 1771.<sup>3</sup> They say: "To the well judged care of the Proprietors and the piety of our ancestors we owe it that our livings are in general the most respectable of any in America. What a pity they cannot be suffered to remain so; but, with grief, we behold a very different spirit now prevailing." They fear that by the proposed inspection law their salaries will be reduced not only below their present standard, but, in many cases, "far below even a decent competence." To attack the clergy is to attack the church, and to do that is to attack the Proprietary's prerogative. They are persuaded that to support them will be unpopular, but are confident that Eden's conduct rests on a "firmer basis than the popular favor, even that of truth, justice and public utility."

We have already seen that Eden, though firm in asserting

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<sup>1</sup> *Maryland Gazette*, Oct. 9, 1771.

<sup>2</sup> Rev. Robert Reed advertised in the *Maryland Gazette*, January 5, 1774, that he will open a boarding school to help out his salary, which has been reduced one-half by recent measures.

<sup>3</sup> Twenty-one signers. Allen Papers, Vol. I. No. 90.

what he believed were the legal rights of the Established Church, was no blind partisan of that body, but placed the interests of the province and the Proprietary before those of the establishment. What the rights of the Anglican Church were in Maryland seemed at first an easy question to decide. With the expiration of the fee bill, which had replaced the old law for the time, it was thought the old law of 1702 came again into force. By this the clergy received a larger allowance, forty pounds of tobacco per poll, instead of thirty. This law had been enforced without question for many years after its first enactment and until growing hostility to the church during recent years had caused a reduction of the amount to be paid. Under this law, as Samuel Chase clearly said, in two opinions given to Rev. Mr. Barclay on April 3 and May 29, 1772, the clergy may sue either on the sheriff's bond for the tobacco he had received and not turned over to them, or the sheriff himself, for money had and received. The sheriff may levy on delinquents' property for this as for other unpaid taxes. The county courts had no discretion as to assessing the amount, which the sheriff must collect, whether the county court has made the assessment or not. In either case the clergyman has a right to receive his forty pounds per poll.<sup>1</sup>

However, the question became much more difficult of solution when, in June and July, it began to be queried whether the act of 1702 was valid. The ground for this doubt was the fact that King William III, in whose name the Legislature had been summoned, had died before it had met and enacted the law. It was, therefore, claimed that it was no law at all. The friends of the law first answered<sup>2</sup> that, in that case, the earlier act of 1700, repealed by the act of 1702, was still in force, and that also imposed a payment of forty pounds per poll.<sup>3</sup> To this the enemies of the law replied<sup>4</sup>

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<sup>1</sup> *Maryland Gazette*, Aug. 6, and Sept. 3, 1772.

<sup>2</sup> Maryland was a royal province in 1702.

<sup>3</sup> *Maryland Gazette*, July 30, 1772.

<sup>4</sup> *Maryland Gazette*, Aug. 6, 1772.

that the act of 1704, which was a general repeal of all prior laws, with a few specified exceptions, had put an end to any life the law of 1700 had.

This argument, retort some of the friends of the law,<sup>1</sup> is of no consequence; the act of 1704 confirms that of 1702 and at least four subsequent laws<sup>2</sup> recognize it as valid. Others answer that the law of 1704 contains this clause: "Saving always to all and every person or persons, whatsoever was and is his and their rights and benefits, which he and they had by the former acts of Assembly, anything in this present act containing to the contrary notwithstanding," and, as the clergy had undoubted rights under the act of 1700, these were here preserved.

Chase had been a violent member of the popular party, and his opinions, which were published at this time, created not a little excitement. It was even claimed that one of them at least was a forgery,<sup>3</sup> published to raise false hopes on the part of the clergy. Others said<sup>4</sup> that the opinions were guardedly worded, expressing what would be the law if the statute were valid, without giving any testimony to its validity; while others maintained that the former opinion at least "gives undoubted testimony" to the validity of the law, and shows the inconsistency of Chase in making such violent speeches against it in the Assembly.

Upon the tumult comes the majestic voice of William Paca. This man seems to me the ablest constitutional lawyer of the province at the time and to have possessed remarkable keenness of insight and logical power. In a long opinion, dated August 15, 1772, and printed in the *Maryland Gazette*,<sup>5</sup> he advances cogent arguments against the validity of the law. He shows that in all similar cases acts passed after the death of the King in whose name the session was

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<sup>1</sup> *Maryland Gazette*, Aug. 13, 1772.

<sup>2</sup> 1773, ch. 10, 1715, ch. 24, 1730, ch. 23, Inspection Law of 1763.

<sup>3</sup> *Maryland Gazette*, Aug. 20, 1772.

<sup>4</sup> *Maryland Gazette*, Sept. 3, 1772.

<sup>5</sup> *Maryland Gazette*, Sept. 10, 1772.

called have been expressly confirmed by subsequent legislation, and that Maryland's history had such an instance after the death of Charles Lord Baltimore. The statute continuing all commissions for six months after the death of the King<sup>1</sup> did not apply to Parliament, nor was prevention of the dissolution of Parliament thereby intended. The Assembly is the Parliament of the province, and hence the same rule holds as to it. The act of 1702 was, therefore, void when passed. It has never been properly confirmed. Every confirmation must be either express or implied. There has never been an express confirmation of the law, and the very idea of an implied confirmation of a void law is ridiculous. The saving clause of the act of 1704 has no force here, for it only refers to such rights as had accrued and not to future ones. As to the acts recognizing the law of 1702, their recognition is of no account if the statute be void, for a recognition of a law by another can only serve as presumptive evidence of the existence of the former.

A Talbot county writer,<sup>2</sup> taking the same side of the question, showed that the act of 1700 was never assented to by the Crown, but returned for amendment by the Assembly, and the amended act was that of 1702. Thus the act of 1700 cannot possibly be in force, and, as the act of 1704 does not "assume any independent, irrelative power of establishing a certain mode of public worship," and there is confessedly no subsequent law, the establishment of the church entirely depends on the validity of the act of 1702.

Other writers<sup>3</sup> take up one side or the other, but add but little to the controversy until the able pen of Rev. Jonathan Boucher<sup>4</sup> appears to contend for the clergy.<sup>5</sup> He and his

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<sup>1</sup> 7 and 8, Wm. III., ch. 27.

<sup>2</sup> A.B., *Maryland Gazette*, Aug. 27, 1772.

<sup>3</sup> *Maryland Gazette*, Aug. 27, Sept. 3, 17, Oct. 17, 1772, Jan. 7, 1773.

<sup>4</sup> Dec. 31, 1772, Jan. 7, 1773, *Maryland Gazette*.

<sup>5</sup> Rev. Jonathan Boucher. The best account of his life is found in *Notes and Queries*, 3d Series, Vol. IX, pp. 75 and 282. 5th Series,



vestry, among whose numbers were both Chase and Paca, engage in fierce conflict, but chiefly use the arguments already advanced or such as are personal to the combatants.

## CHAPTER VII.

### THE CONTROVERSY BETWEEN ANTILLON AND FIRST CITIZEN.

In the beginning of 1773 the quarrel over the Governor's proclamation had become chronic,<sup>1</sup> when a famous newspaper controversy caused the malady again to assume an acute form. Daniel Dulany, the head of one of the most illustrious families in the province and the man who had gained great praise from the patriots for his forcible defense of their cause at the time of the stamp act, was the one to open the discussion. This he did in support of the Governor, being now opposed to the popular side. On January 7, 1773, he published in the *Maryland Gazette* a dialogue purporting to be between two citizens, in which the first took the task of attacking the proclamation and was worsted in the argument by the second citizen, who advocated the Governor's side.

Charles Carroll, of Carrollton, a wealthy Roman Catholic land-owner, who had been educated at the Jesuit College at

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Vol. I, p. 102; Vol. V, p. 501; Vol. VI, pp. 21, 81, 41, 161; Vol. IX, pp. 50, 89, 311, 371; Vol. X, p. 93.

See also *Gentlemen's Magazine*, Vol. LXXIV, p. 591. Boucher claimed to have written all Eden's speeches, revised the laws of Maryland and written many papers for the Council. He speaks of Annapolis in high terms. "It was then the greatest town in North America, and many of its inhabitants were highly respectable as to station, fortune, and education. I hardly know a town in England so desirable to live in as Annapolis was then," N. and Q., 5th Series, Vol. VI, pp. 21-22.

<sup>1</sup>McMahon, p. 388, April 10, 1773. Lord Dartmouth writes Eden, "I consider your continuance in the Government of Maryland as a circumstance of very great advantage to the King's service."

St. Omer, at Rheims, and at Paris, in France, and at the Temple in London, felt that Dulany's presentation of the popular side had not been adequate, and determined to state it more fitly. So, on February 4, he published a rejoinder to Dulany's article, signing himself First Citizen.

To this Dulany replied in turn in the issue of February 18, signing himself Antillon, and the controversy was fairly begun. Further letters of Dulany's appeared on April 8 and June 3, and answers by Carroll were printed in the issues of March 11, May 6 and July 1. Others joined in the fray, and letters replying to Antillon, written by other members of the popular party, were published in the *Maryland Gazette* for March 4, April 1, May 13 and June 10, while the Governor found other defenders on March 18, March 25 and May 13. The *noms-de-plume* of these antagonists were such as were characteristic of the time. Did Protestant Planter and Free Patriot support First Citizen? Then Plain Truth and Brutus came to the support of Antillon. The controversies between the clergy and their vestries were going on meantime, and the papers must have furnished interesting reading for all classes. In the latter controversies, as we have seen, Rev. Jonathan Boucher and his vestry were most conspicuous, though we find such minor combatants as "Clericus Philo-geralethobolus."

The popular opinion has been that Charles Carroll had much the better of the argument with Dulany. In this opinion I do not join, though I admit most readily that in Carroll, Dulany found a worthy antagonist and that Carroll's success in arousing the people was most noteworthy, especially when we consider his religious faith. The last was by no means popular in Maryland at that time, and I regret to have to record the fact that Dulany strove in an unworthy manner to use that fact to Carroll's prejudice. My conclusion is that Dulany's arguments found their best refutation in the paper written by William Paca, Thomas Johnson and Samuel Chase.

It is interesting to observe how, in the bitterness of their

attack upon his measure, even the Independent Whigs do not lose their esteem for Governor Eden. His personal popularity still continued; the heaviest accusation they could bring against him was that he had been influenced by the members of his Council to follow the course he had pursued. "O Eden! Eden! had you relied upon your own manly judgment in every political case!" they cry out; "had you been guided by your own benevolent feeling, upon late important subjects, had you rejected that imprudent and often-repeated project of daring ministers in placing the Governor in the front as a screen to themselves the moment they are scorched by the patriotic fire of the delegates of the people, Eden had been a little god below."<sup>1</sup> Carroll, the mouthpiece of the opposition, joins in the tribute, and writes: "I know him to be generous, of a good heart, well disposed, and willing to promote, if left to himself, the happiness and welfare of the province; but youthful, unsuspicious and diffident of his own judgment in matters legal and political, failings (if they deserve the name) that have caused him to repose too great a confidence in you" (i. e. Antillon-Dulany).<sup>2</sup>

In their desire to exculpate the Governor from blame, the Whigs likened his position to that of a monarch and applied to him the maxim, "The King can do no wrong." This application Antillon repelled, writing, "If the Governor, in issuing the proclamation, acted on a conviction of its propriety (and he has most expressly declared he did), he desired a satisfaction and honour from his firm and open avowal which he will hardly be induced to relinquish and shelter himself under the infamous doctrine of your most servile adulation that the Governor is a king and can do no wrong."<sup>3</sup>

<sup>1</sup> *Maryland Gazette*, Feb. 11, 1773.

<sup>2</sup> *Maryland Gazette*, Mch. 11, 1773.

<sup>3</sup> *Maryland Gazette*, Feb. 18, 1773. The analogy with the regulation of Fees in New York and Jamaica was insisted on by the administration, Aug. 5, 1773.

Dulany puts the case for the proclamation thus: "The proclamation binds no further than it is legal; its legality is determinable in the ordinary courts of justice; it directs no method of compulsion to enforce compliance from the people, nor gives any remedy to the officer for the recovery of his dues, to which he is not entitled by the rules of law; if legal it is not oppressive; if not legal the severest epithet that justice can admit is that it is useless to the officer, though of some service to the people in the restriction to which he is subjected."

Carroll answered:<sup>1</sup> "No; it is taking money without law, as Charles I took ship-money. If the Governor may limit fees by proclamation, why may he not raise them? And, as to taking the matter to the courts, are not the Governor and Council the highest court and thus judges of their own case?"

Antillon now claims: "Though the old, or established, rates of fees are not to be altered, increased or augmented, yet when fees are due and the rates of them not yet established they may be settled without the legislative authority, because the principle of the authority remains, and it ought to be active when the reason of it calls for exertion."

In answer to this, First Citizen tells us that the fees are new, as the law has expired, and the Governor is, therefore, laying taxes.

Does Antillon argue that the judges in Westminster Hall settled fees, and, therefore, the Governor of Maryland may? First Citizen boldly tells him,<sup>2</sup> in an able paper, that "the inference will not be granted unless you prove that the King, by his sole authority, contrary to the express declaration of his commons, has settled the fees of officers belonging to the courts of law and equity in Westminster Hall, that is, hath laid out new fees on the subject at a time when they were no longer paid out of the royal revenue, but taken out of the

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<sup>1</sup> *Maryland Gazette*, Mch. 4, 1773.

<sup>2</sup> *Maryland Gazette*, May 6, 1773.

pockets of the people." The fees of officers, he proceeds to tell Antillon, have been established by the Legislature for many years past in this province, and the act establishing them was made temporary; that, on a change of circumstances, an alteration of the fees, if expedient, should take place.

Carroll then turns to the history of the province, and there finds that, as far back as 1638, there was a law passed for the limitation of officers' fees, and that in 1692 the Governor's authority to settle fees was expressly denied by the Lower House, which voted unanimously "that it is the undoubted right of the freemen of this province not to have any fees imposed upon them but by the consent of the freemen in a General Assembly." To this the Governor then agreed, and, therefore, formally relinquished the claim to settle fees by prerogative. The popular claim has ever since then been maintained by the Legislature, and the laws for limitation of officers' fees "ought to be considered as so many strong and express denials of the Proprietary's authority to settle fees and as so many acknowledgments, on the part of the government, of its illegality." Consequently there are no old and established fees, for all fee laws were temporary. Therefore, "fees settled by proclamation are new fees. . . . new fees are taxes, and taxes cannot be laid but by the Legislature." The sum of the whole matter is that "fees settled by one or two branches of 'the Legislature are' an unconstitutional and illegal tax."

Such is the summary of Carroll's able argument. Dulany answered<sup>1</sup> it in an extremely long letter, insisting that the right of levying fees was in the hands of the Governor and Proprietary; that the 1692 precedent was of no value, because there was then an act in force to regulate fees, while now there was none. The Governor having authority to levy fees when there was no act, did right to issue a proclamation, which really prevented extortionate fees; while it provided

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<sup>1</sup> *Maryland Gazette*, June 3, 1773.



no means for the enforcement of payment. Consequently the officer was forced, as while the fee bill existed, to resort to the legal remedy of execution to obtain his payment. This could be resisted, and the matter thus brought to court. Antillon's last letter is his ablest. After Carroll replied to it<sup>1</sup> this newspaper controversy ceased.

While the discussion in the *Gazette* was in progress important changes had occurred. On February 25 Eden still further prorogued the Legislature until May. Before that date came, a new commission<sup>2</sup> to the Governor arrived from Henry Harford, the new Proprietary, and, on its receipt,<sup>3</sup> Eden dissolved the Assembly and issued writs for a new one. Frederick, last Lord Baltimore, had died, leaving the province to his illegitimate son and making Eden one of his executors.

## CHAPTER VIII.

### CONTINUANCE OF THE CONTROVERSY.

The canvass for members of the Lower House was a bitter one, and the election showed the choice of an Assembly as thoroughly opposed to the proclamation as the former one had been. The proclamation was hung in Frederick and Anne Arundel counties. Addresses from the newly-chosen delegates to First Citizen appear in the *Maryland Gazette*. "Mark Antony" buries the proclamation in Baltimore.<sup>4</sup>

The Governor's policy did not lack defenders among the people, who drew up protests in answer to the addresses of Carroll, and even printed scurrilous poems about him.<sup>5</sup> Amid such excitement the Assembly met on June 15, 1773. William Tilghman was chosen Speaker. Eden opened the

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<sup>1</sup> *Maryland Gazette*, July 1, 1773.

<sup>2</sup> Dated Mch. 2, 1773.

<sup>3</sup> Apr. 29, 1773.

<sup>4</sup> *Maryland Gazette*, May 14, 20, 27 and June 10, 1773.

<sup>5</sup> *Maryland Gazette*, June 17, 24, 1773.

session with a speech, calling the attention of the body to the fact that they had a new Lord Proprietary, and offering to prorogue the Lower House if they prefer it.

It was just about harvest time, but the delegates felt their duty demanded that they stay, and they remained in session until July, when they were prorogued until October.

The Lower House, on the day after its organization, reaffirmed its resolves of October 3, 1771. This showed a stubborn spirit of independence, which augured ill for the success of the Governor's cause. Their answer to his address on June 17 was as little conciliatory. They acknowledge that the time is inconvenient, but will try to make such laws as will promote the general welfare, and "whenever your Excellency is pleased to concur you will certainly obtain the thanks of a grateful people." Eden had mentioned that the King takes interest in the province. To this they dryly reply that this announcement gives them "singular pleasure," and that they believe "that the conduct of the late representatives, so generally agreeable to their constituents, when fully known to the father of his people, cannot but meet with his royal approbation." All this foreboded no peace. On June 18 the Lower House resolved not to bring in a bill for the regulation of tobacco by a vote of twenty-four to twelve, Paca, Chase and Johnson being in the minority. Five days later they decide to have such a bill prepared by a committee of eleven, seven of whom were in the minority on the earlier vote. I do not pretend to explain this change of front.

It is important to note that this bill dealt with the inspection of tobacco alone. At the same time a committee of ten, seven of whom were on the former committee, was appointed to prepare a separate bill for the regulation of officers' fees. This separation of the bills is an important step. The next day a third bill for the support of the clergy was brought in. This bill was made on the "principle of equality" which prevailed in Virginia, and was passed by the Lower House on June 25. It provided that each min-

ister, without regard to the size of his parish and exclusive of his glebe, should have 32,000 pounds of tobacco yearly, compoundable at twelve shillings and sixpence per hundred-weight. The vote on the bill was thirty-nine to six, though the amount each clergyman should yearly receive was carried only by twenty-six to twenty-three, many of the patriotic leaders voting against it.<sup>1</sup> The Upper House rejected the bill on the next day. On June 19 the Lower House, in committee of the whole on the state of the clergy, had passed resolutions that they considered the act of 1702 as not legally enacted. These resolutions the Upper House now answered, stating that they consider that act in force, and will be glad to discuss the matter. They state that the clergy bill is objectionable, because the provisions for equality of salaries would be oppressive on incumbents of small parishes and would "damp the emulous exertions of merit, which the hopes of preferment are wont to animate."

The bill for the inspection of tobacco was brought in on June 29. The Lower House decided by a vote of twenty-nine to fifteen not to postpone the matter until another session, the popular leaders voting in the affirmative. Two days later the bill was passed, the yeas and nays not being called. The Upper House promptly rejected the bill.

On June 21 the committee to inspect public offices<sup>2</sup> was directed by the Lower House to enquire what fees are taken and by what authority. Three days later they report, filing answers to their queries made by the clerk of the Provincial Court, the Register in the Prerogative Court, the Register in Chancery and the clerk of the Land Office. All state that, by order of their superiors, they charge the fees established by the old law and the proclamation.

The Lower House did not pass any fee bill at this session, but contented itself with expressing its sentiments in the

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<sup>1</sup> Johnson, Chase, Smallwood, Paca, Hammond voted, "No," as did Ennals.

<sup>2</sup> The Upper House at this session, as at several others, rejected a Lower House bill to prevent the buying and selling of offices.

form of resolutions passed on July 2, the day before the prorogation, and doubtless largely the cause of that measure.

These proclaimed that "this House is constitutionally invested with a power to commit to the public jail, by way of punishment, any person for breach of privilege or contempt, there to remain until discharged by order of this House," and that "this House, as the grand inquest of the province, has an unquestionable authority, founded on precedent and long uninterrupted usage, to hear and enquire into all complaints and grievances, and, as incidental to that authority, has constitutionally a power to commit any person for any crime whatsoever." They follow these by reaffirming the resolutions of October 18, 1771, and no one now dissents to the declaration that the advisers of the proclamations are "enemies to the peace, welfare and happiness of this province and the laws and constitution thereof."

After such an exhibition of firmness on the part of the Lower House there is little wonder that the Assembly was prorogued, though Eden, in his closing address, makes little reference to the resolves, but assigns the causes of prorogation to be the slimness of attendance in the Houses and the small likelihood that further bills would be passed. He even praises the action of the Assembly, saying that he is "pleased to think that the province will reap great advantages from the acts passed this meeting."

A few bills were passed : to enlarge Baltimore town ; regulate laying attachments and prevent counterfeiting;<sup>1</sup> but the most interesting feature of the session was the passage of the resolutions against the proclamation, which caused the prorogation of the Assembly.

The controversy did not cease with the adjournment of the Legislature. In proroguing it the Governor imputed the opposition "to the aims of faction and the rage of disappointment," and told the Assembly that "the proclamation was

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<sup>1</sup> Recommended by a message from Eden.

solely for the benefit of the people of this province, by nine-tenths of whom he had the greatest reason to think that it was understood." These were bold words and hardly justified by the facts. It is true his extreme admirers wrote of his conduct<sup>1</sup> in terms such as the following: "That serenity of temper which our chief magistrate showed when the measures of administration were censured can only proceed but from an elevated soul and a mind conscious of its own rectitude. To add to this, if advantages of birth, an acquaintance with the liberal sciences, knowledge of the world and attractive affability constitute the gentleman, I am informed Governor Eden has the greatest pretensions to that distinguished character."

It is also true that prominent men like John Hammond were ready to take up the Governor's side of the controversy, when Dulany ceased to champion it, and to quote from the rich store of their knowledge of classics, of English literature, English history and English law in support of their contention.<sup>2</sup> But the majority of the leaders and probably also of the people took the side of the opposition, and Thomas Johnson, Samuel Chase and William Paca answered Hammond's arguments in a very able paper.<sup>3</sup>

In all his measures Eden had the hearty support of Lord Dartmouth and the English Government,<sup>4</sup> but from the Proprietary, himself but a minor, he could receive no help. In such a condition of affairs he opened the session of the Assembly on October 23, 1773. In his opening speech he recommends joining with Virginia in the erection of a lighthouse on Cape Henry, doing away with lawsuits about the boundaries of land through variations of the compass, im-

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<sup>1</sup> *Maryland Gazette*, August 5, 1773. They point to precedents in New York and Jamaica for his action.

<sup>2</sup> *Maryland Gazette*, August 29, 1773. McMahon, p. 394.

<sup>3</sup> *Maryland Gazette*, September 9, 1773.

<sup>4</sup> Dispatches, Nov. 4, 1772; Jan. 12, Feb. 9, Feb. 26, Apr. 10, Oct. 28, 1773. Governors forbidden to grant waste and unsettled lands till further pleasure of the Crown, Feb. 5, 1774.



provement of the public roads, whereby "general advantage will result from opening a communication between our merchants and distant settlers," and the establishment of a precise rule, whereby "the extent and proper application of the penal statutes of England may be sufficiently ascertained." He ever had at heart the interests of education, and recommended to the Legislature "the extensive utility which cannot fail to flow from an establishment in this province of a regular seminary for our youth, liberally instituted and supported," and expressed his "warmest wishes that it may engage your particular attention." The Baltimore newspaper endorsed this recommendation, but the Assembly was too much busied over things to pay much heed to it.<sup>1</sup> The Lower House tells Eden these things are "of consequence," but "matters of an important nature more immediately affecting the welfare of the province demand attention more pressingly."

The two Houses appointed committees of conference, but these could come to no agreement, and on October 29 Eden prorogued the Assembly until November 16. We still find controversial papers in the *Maryland Gazette*,<sup>2</sup> but are amazed to read in the *Maryland Journal*, whose editor, Goddard, as a Tory, that "this province is in a flourishing condition, and what contributes greatly to it is the unanimous and good understanding that subsists between the Governor and the Assembly."<sup>3</sup>

The journals of the Lower House are unfortunately lost for both of the autumn sessions of 1773. From the Upper House journal we learn that at the October session they rejected a Lower House bill for regulating tobacco, but offered

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<sup>1</sup> *Maryland Journal*, Oct. 23, 1773. *Maryland Gazette*, Oct. 14, 1773. Nothing was done in the matter, though Eddis thought the effort would be successful, and Gov. Bladen's mansion would be used for the college. The building is now McDowell Hall of St. John's College. Eddis, p. 146.

<sup>2</sup> *Maryland Gazette*, Nov. 4, 1773.

<sup>3</sup> *Maryland Journal*, Nov. 6, 1773.

to accept it if the Lower House would include the maintenance of the clergy in the bill, according to the old act, giving the alternative, after the death or removal of the present incumbent, of taking tobacco or four shillings common money from each taxable, and would also include officers' and lawyers' fees, according to the proclamation. They were not yet ready to yield one inch.

The November session began on the 16th. Two days later the Speaker, attended by *all* the members of the Lower House, brought up a bill for inspection of tobacco to the Upper House. The latter body felt that it must yield at last, and, on the 25th, passed the bill, with some unimportant amendments and one important one, changing the duration of the act from fourteen to three years. They then return the bill to the Lower House, asking that they agree to the amendments and include a provision for the clergy, as recommended at the last session. But they agree to assent to a mere tobacco bill "distinct from and independent of every other object." The Lower House had won half its fight. As to the clergy, the letter says nine vacancies have already occurred since October, 1771, and the planters may regret rejecting the proposition. The public resolve of the Lower House that the Act of 1702 is not in force cannot affect the question of its validity, and should it be declared legal, as the Lower House had *formerly* thought it was, the proposition would avoid inconveniences. Without provision for the clergy the act may not prove satisfactory, so the duration has been shortened. The Lower House refused to add the clerical provisions, and, the Upper House yielding, the bill was signed by the Governor on November 30. The provision for the clergy was put in a separate bill, passed by the Lower House on December 16, by the Upper on the 21st, and, being signed by the Governor, became a law of the province. This act<sup>1</sup> was not to influence the determination of the question respecting the validity of the tax of forty

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<sup>1</sup> Act of 1773 (December), ch. 28.

pounds per poll previously laid, but it provided that, for the ensuing twelve years, every taxable inhabitant must annually pay thirty pounds of tobacco or four shillings in money towards the support of the clergy of the Church of England. The election between tobacco and money was only given to those who paid before June 10, and fitting penalties were enacted against delinquent taxpayers and dishonest sheriffs. Thus was the question of the clergy solved.

The three bills dealing with the other points of difference—buying and selling of offices, officers' fees and attorneys' fees—were all lost in the Upper House. So, while the Lower House gained a victory in getting part of the question acted on separately, the Upper House were masters of another part of the field, and fees still were collected according to the proclamation.

It is true, however, that the bitterness of the struggle appears to die away. The quarrel had not as yet broken up the social life of the colony. The love of horse-racing still kept up the regular meets, in one of which, at Nottingham, in June,<sup>1</sup> Eden's bay horse, "Why-not," distanced both his competitors in the first heat, although "Why-not" had run three very hard four-mile heats at Philadelphia on that day fortnight, and had since traveled from thence in very hot weather. In the fall races at Annapolis "Why-not" did not have so good success, being beaten by Col. Wm. Fitzhugh's famous horse, "Regulus."<sup>2</sup>

The western part of the State was filling up with German settlers, whose industry and emulation were astonishing and caused Frederick county to improve amazingly.<sup>3</sup> In Frederick town there were plenty of stocking and worsted weavers, and the church was said to be the only one in the prov-

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<sup>1</sup> *Maryland Gazette*, June 3, 1773.

<sup>2</sup> *Maryland Gazette*, Oct. 1, 1773, *Virginia Magazine of History and Biography*, Jan. 1895.

<sup>3</sup> *Maryland Gazette*, Nov. 6, 1773. S. Eden's Dispatch to Dartmouth, Jan. 29, 1773.

ince with a steeple. In the growth of Frederick and Baltimore were already to be seen the beginnings of that influence which should many years later overturn the constitutional system of the State.<sup>1</sup> In Southern Maryland the prosperity was not so great. There being no act to regulate the inspection of the staple tobacco, it had fallen into great disrepute in England and no longer commanded as high a price as formerly.<sup>2</sup>

The Assembly passed no acts at its October session, but the November one, which lasted until December 23, was an extremely fruitful one. Both sides seem to have tried to attend to other matters of importance to the provinces besides the question of fees. Among the acts passed at this session we find two establishing new counties, one called Harford, for the new Lord Proprietary; the other Caroline, in honor of Governor Eden's wife. In this latter county, land was to be bought at Pig Point and the county seat built there, bearing the name of Edentown. The initial vowel has been lost, but Denton is the county town of Caroline county until this day, and thus, unknown to most of us, we still commemorate our last provisional Governor.<sup>3</sup>

Other acts add land to Baltimore, establish a market there, provide for the relief of the poor in that town, appropriate money towards erecting and maintaining a light-house on Cape Henry, and for the covering of the "stadt house" roof with copper. The criminal business of Baltimore county is regulated, provision is made for the preservation of wild deer, and the law with reference to deposi-

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<sup>1</sup> See Steiner on Maryland Electoral College.

<sup>2</sup> Eden's dispatch to Dartmouth, Aug. 19, 1773.

<sup>3</sup> Statute of Nov., 1773, ch. 6. A town to be known as Edinburgh was advertised by Geo. Hunter, as laid off at Chapel Point, near the mouth of Port Tobacco Creek, in the *Maryland Gazette* of Sept. 29, 1771. This enterprise apparently came to naught. Eden and Caroline streets in the eastern part of Baltimore City are named in honor of Governor Eden and his wife.

tions is amended. With such a good record, the Assembly might well feel they had earned a Christmas recess.

But chief of all their acts was one which put an end to much difficulty in private affairs and which provided "for the regulation of the staple of tobacco and preventing frauds in His Majesty's revenues." The passage of this act was a victory for the popular party, as at previous sessions the Upper House had refused to separate this measure from the fee bill and had insisted in passing both in one act. This new law was felt to be so important that place for its important provisions was found in the *Maryland Gazette*, an unusual honor.<sup>1</sup>

## CHAPTER IX.

### THE LAST LEGISLATURE.

The Assembly, which had been prorogued until April 4, 1774, was summoned to meet on March 23, that preparation might be made for the Governor's leaving the province for a time. He had been appointed one of the executors of the will of his brother-in-law, the last Lord Baltimore, and felt that a trip to England was necessary to attend to this business and to other private affairs. As early as August 21, 1772, when transmitting to Lord Dartmouth the report of the proceedings of the last session of the Assembly, he speaks of his needing to return home. He states in this letter that a "severe fit of illness" and the "interesting situation of my affairs from the decease of the Lord Proprietary," have delayed the sending of the enclosed report, and adds that, probably, in a short time, "from the critical situation of my private affairs with regard to the disposition made of this province by Lord Baltimore's will, I may be under a necessity of soliciting your Lordship to procure me His Majesty's leave to be a short time in England to attend thereto." He fur-

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<sup>1</sup> *Maryland Gazette*, Dec. 2 and 9, 1773.



ther states that he has authorized the Solicitor General, or his brother, Mr. Eden, of Lincoln's Inn, to make such application for him, should his immediate presence be needed. Mrs. Eden went "home on this business" in Captain Eden's ship on August 27, 1772, and seems never to have returned to Maryland.

The death of Lord Baltimore<sup>1</sup> on September 14, 1771, had dealt a heavy blow to the Proprietary Government. Debauchee and rake though he was, caring nothing for his province save as a source of revenue; yet he represented the family to which Maryland owed so much, and naturally received some of the loyalty which was his family's due. At his death, however, not only did the male line of his family and the title of Lord Baltimore become extinct, but the province received as its Proprietary, by the terms of his will, not one of the collateral branches of the Calvert family, but Henry Harford, an illegitimate son of the last Lord. Whatever affection may have been felt for the old family vanished when in its place came a minor and a bastard.

In case Harford died without heirs, the province should first descend to his sister, Frances Mary Harford, and then to Caroline Eden, the wife of the Governor. Both she and her elder sister, Mrs. Louisa Browning, were left £10,000 by the will, on condition they accept it. Hugh Hammersley, Baltimore's secretary, and Eden were made executors.<sup>2</sup> The elder sister had been left the reversion of the province by her father, Charles, Fifth Lord Baltimore, and there would probably have been a long legal contest over the sixth Lord Baltimore's will had not the Revolution interfered. The contest had, in fact, been begun in the Court of Chancery.

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<sup>1</sup> Eden issued a proclamation, on Mch. 10, 1772, suspending the issue of Land Office Warrants for the present, probably on account of Lord Baltimore's death. The suspension continued until May 30, 1773.

<sup>2</sup> Scharf's Maryland II., 138.

The Assembly,<sup>1</sup> which met in March, 1774, adopted the usual addresses to the Governor, perhaps a trifle more formal than usual. The Lower House grumbled a little about the "inconvenient season" in which they are called together, and promise to consider the recommendations of Eden's speech.

The Upper House are naturally more cordial in their response: "The experience we have hitherto had of your excellency's good intentions to promote the welfare and prosperity of the Province makes us most ardently wish you may speedily settle those affairs, which require your personal attention in England, and that we may soon have the pleasure of seeing your excellency again exercising the powers of government in Maryland."

On March 28 the Lower House appointed a committee to bring in a fee bill. Its report was made three days later, was debated<sup>2</sup> until April 2, and was then passed. It was rejected by the Upper House on the 7th, and so the proclamation still regulated the rates of fees until the Provisional Government replaced the Proprietary one. Eden had virtually won the victory in the fee question.

Another bill causing controversy at this session was one to preserve the independence of members of the Lower House. We have no knowledge as to what this act was, but know that it passed on April 16 by a vote of twenty-nine to thirteen, Johnson, Chase and Paca being in the minority. The Upper House, on the next day, amended the act and returned it. The amendments were evidently meant to kill the bill and provide that each delegate take the oath that he has not deceived any elector to gain his vote, and will not

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<sup>1</sup> At this session we find Somerset and Worcester are seeking for a Pocomoke canal, *vide* L. H. J., Apr. 5.

<sup>2</sup> Mch. 3, Chancellor not to be allowed a fee for a final decree. For 33, against 13, including Johnson, Chase and Paca. Apr. 1, no fee to sheriff for executions, vote, 21 to 13, Johnson, Chase in minority again.

misrepresent the views of any other delegate to gain an elector's vote; that no person who hath enjoyed any office of profit, or hath applied, even though unsuccessfully, for such office, shall be chosen delegate, under penalty of a fine of £1000 sterling and disqualification to hold any office of honor or trust; and that in the future no pay be allowed legislators. The Lower House immediately rejected the amendments, and, by a vote of twenty-five to ten, referred the bill to the second Tuesday in July for consideration. In other words, it was indefinitely postponed. Johnson was here in the majority, Chase in the minority. The votes of the popular leaders are often very hard to explain, as we know little of the motives which actuated them.

The session lasted until April 19. The laws for the most part are not of great importance,<sup>1</sup> dealing with such subjects as the improvement in public roads in Frederick County,<sup>2</sup> the relief of languishing and insolvent debtors,<sup>3</sup> the regulation of gauging of casks in Baltimore, and the prohibition of throwing out ballast in harbors.<sup>4</sup>

When the session closed Eden prorogued the Assembly until July 11, but it was never to meet again under the Proprietary Government. Under the last law passed at this session, Hanson placed this note in his collection of the Laws of Maryland: "Here end the laws under the Proprietary Government. The arbitrary acts of the King and Parliament of Great Britain having manifested a settled design of enslaving her colonies in North America, a determinate spirit of opposition, in a little time, pervaded every part of the Continent, which now belongs to the United States. From this period, notwithstanding the mere forms of the ancient government were permitted a little longer to exist, there

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<sup>1</sup> They agreed to pay Chas. W. Peale £100 for his picture of Lord Chatham.

<sup>2</sup> Act of 1774, ch. 21.

<sup>3</sup> Act of 1774, ch. 22 and 28.

<sup>4</sup> Act of 1774, ch. 23.

was no real authority, except that derived immediately from the people."

Desiring not to break the main thread of our narrative of the struggle between Eden and the popular party, little has been said of other matters since the beginning of 1772. Indeed we know too little of these lesser matters.<sup>1</sup> Through these years the fine "Stadt house," which the Legislature had authorized in 1769, was rising to tower above the houses of the city, as it does today. The cornerstone of this edifice was laid by our Governor on March 28, 1772, and tradition says that at high noon, when he touched the stone with a hammer, a clap of thunder was heard from a clear sky.<sup>2</sup> The more prosaic account in the *Maryland Gazette* makes no reference to this, but refers to the "cold collation" which was served, the few loyal and constitutional toasts which were drunk, and the three cheers from the workmen, which ended the ceremony.

Among the friends made by Eden was a quiet Virginia militia colonel, who was to be called the father of the country which should be formed from the thirteen colonies. As early as July 9, 1771, George Washington wrote to Rev. Jonathan Boucher, who was teaching young Custis, that in the event of the boy's going to England, as had been suggested, "I should think myself highly favored and him much honored by Governor Eden's letters of introduction."<sup>3</sup> Two months later,<sup>4</sup> when Washington went to Annapolis for the races, he dined at the Governor's mansion.<sup>5</sup> In the following spring Washington writes to Boucher, regretting that the Governor and Mrs. Eden cannot come at that time to Mt. Vernon. Washington adds that he also regrets he did not see Eden when recently in Annapolis, having his por-

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<sup>1</sup> Eden was away from Annapolis for a time in January, 1772. See *Maryland Gazette*, Feb. 6, 1772.

<sup>2</sup> Ridgely's *Annals of Annapolis*, p. 146.

<sup>3</sup> Ford's *Writings of Washington II.*, p. 333.

<sup>4</sup> After dinner to the play at 6 P. M., then to the ball.

<sup>5</sup> Sept. 24, 1771.

trait painted, and asks Boucher "to assure Mr. and Mrs. Eden, which you may do with great truth, that Mrs. Washington and myself shall think ourselves very happy in seeing them at Mt. Vernon whenever they can make it convenient to give us the honor of their company."<sup>1</sup> Such language shows considerable intimacy between the two men. On a later visit to Annapolis, in May, 1773, Washington dined and lodged with Eden.<sup>2</sup>

All sorts of distinguished strangers were entertained at this hospitable mansion, from Lord Dunmore, the Governor of Virginia, to the Indians who stayed there five days in the summer of 1772.<sup>3</sup> Nor were the Governor's friends solely those who favored the measures of the English Government. With no one was he more intimate than with Col. William Fitzhugh, who, after his second marriage, had removed from Virginia to his wife's estate of Rousby Hall, in Calvert County. Yet Fitzhugh was so far from being a ministerialist that he wrote,<sup>4</sup> on June 23, 1774: "This is a crisis when every good member of the community ought to exert himself in the country manufactures. Our *all* depends on the virtues of steadiness, frugality and industry."

The kindness of Eden's nature is well shown in the few letters of his extant to the Fitzhughs and to Rev. John Montgomery, with whom he occasionally exchanged Latin epistles. His many friends were his chief strength in the colony, and though all his characteristics were such as to call forth friendship from the Maryland gentry, probably none had more effect therein than his love for horses and racing. Of this we have already spoken, and we see, as the years go on, this trait loses none of its strength. Sometimes his horse is unfortunate, as when Fitzhugh's "Regulus" beats Eden's "Why-not" on October 1, 1773, but at others, as at the Not-

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<sup>1</sup> Ford's Writings of Washington II., p. 382.

<sup>2</sup> May 21 and 23, 1772.

<sup>3</sup> *Maryland Gazette*, Feb. 24, 1774, *Maryland Gazette*, Aug. 6, 1772.

<sup>4</sup> Allen Papers, Vol. 1, No. 81.



tingham races in June, 1774, "Why-not" wins both races in which he is entered, and Eden's other horse, "Slimi," wins the only other one of the meet.<sup>1</sup> Not only in Maryland races are his horses entered, but they are sent to try for prizes in races in other colonies, as at Philadelphia.<sup>2</sup>

These pleasant features of a life which had much of struggle in it were soon to pass away. Eden's butler had long advertised to have bills against him brought in before his master's departure. The affairs in England seemed to demand Eden's immediate presence, and so, all being ready, he sailed on his brother's ship on May 28, 1774.<sup>3</sup>

Richard Lee, president of the Council, issued a proclamation assuming the government as "President and Commander-in-Chief of the Province of Maryland," but he was not possessed of sufficient strength to stem the tide of popular feeling that was arising against the English Government. It is doubtful whether Eden could have done much had he remained in Maryland; but certainly his departure came most opportunely for the plans of the popular party.

Even before he left the province, resolutions of sympathy had been sent by the people of Annapolis to those of Boston,<sup>4</sup> and May 25 there was chosen, at a popular meeting, a Committee of Correspondence for Annapolis, which should join with like committees from other parts of the province to form one general committee. At this same meeting was adopted a series of resolutions demanding the repeal of the Boston Port Bill, advocating non-importation and an association to enforce it, urging lawyers to refuse to bring suit against a Marylander for any debts owed to an Englishman,

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<sup>1</sup> Eddis, p. 106, says than the Annapolis Races' "Few meetings in England" are "better attended" or have "more capital horses." In June, 1771, Eden attended the Oxford Races, *vide* letter of Matthew Tilghman, in *Baltimore Sun* of October 3, 1895.

<sup>2</sup> *Maryland Gazette*, May 26, 1774.

<sup>3</sup> He made a short stop at both Fitzhughs' on the way. Eddis, p. 161.

<sup>4</sup> *Maryland Gazette*, June 2, 1774.

and proposing to cut off intercourse with any province which will not join in these measures. There was so much dissatisfaction with these resolutions on the part of the loyalists that, on May 27, a second meeting was called in Annapolis to act upon them. At this meeting all the resolutions, save that regarding the payment of debts, were agreed to, either unanimously or by great majorities, and that one was carried by a vote of forty-seven to thirty-one. There was a spirited protest made against this over the names of Lloyd Dulaney and about 160 others. They rightly say the resolution "is founded in treachery, inasmuch as it is big with bankruptcy and ruin to those inhabitants of Great Britain, who, relying with unlimited security on our good faith and integrity, have made us masters of their fortunes, condemning them unheard because they do not secure the repeal of the Boston Port Bill, and that such a resolve is sure to cause the destruction of Maryland's credit."

Other counties, however, had even forestalled the action of the patriots of Annapolis. Kent County, on May 18, had sternly protested against the importation of tea; Talbot County adopted patriotic resolves on May 30, and was followed by Baltimore County on May 31, by Kent on June 2, by Anne Arundel on June 4, by the lower district of Frederick on June 11, and by Charles on June 14.

From delegates elected at such meetings was formed the first Convention of the Province of Maryland, which met at Annapolis on June 24, 1774. This was the beginning of the Provisional Government, which finally entirely superseded that of the Proprietary, declared Maryland independent, and framed a permanent Constitution for the new State. Into its history it is not our purpose to go. We treat of the end of the old, not of the beginning of the new.<sup>1</sup>

In addition to internal difficulties, Eden had an external one to contend with just before he left the province. This was with relation to the disputed boundary between Penn-

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<sup>1</sup> See Silver's monograph in J. H. U. studies for 1895.

sylvania and Maryland. Within ten years Mason and Dixon had run their celebrated line between the two provinces; but the return of the boundary failed to meet the wishes of Harford's guardians, and they refused to sign it. On learning this, Governor John Penn wrote to Eden, stating that he proposed to issue an *ex parte* proclamation, establishing the boundary, and expressing the hope that Robert Eden, before leaving for England, would take measures to prevent the peace of the province from being disturbed.<sup>1</sup> Eden answered this letter on May 21, 1774, stating that he was on the eve of his departure, that Maryland would do nothing until authorized from England, and that it would be most improper for Eden to take any steps in the matter under the circumstances. He thinks "some disagreeable disturbances" may follow an *ex parte* proclamation, and desires Penn to forbear issuing it. He had already, in the previous January, told Penn that he could take no steps until he received permission from England. Influenced by this letter, Penn postponed his proclamation for a time,<sup>2</sup> but issued it finally on September 15. In so doing he was too hasty, for a letter<sup>3</sup> from Lord Dartmouth was already on its way to him, forbidding him to extend his jurisdiction over disputed territory. On receipt of this,<sup>4</sup> Penn suspended his proclamation for the time, but issued a new one on April 8, 1775, having received permission so to do.<sup>5</sup> When Eden had heard from Penn that the second proclamation was contemplated, he wrote him that he had received no notification that it had been permitted, and could not join in issuing it. A request made at this time by Eden for delay until news can be obtained from England, is answered rather contemptuously by Penn: "I rather wished than expected your concurrence in a proclamation,

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<sup>1</sup> Force's American Archives IV. 1; 738.

<sup>2</sup> Force's Archives IV. 1; 789.

<sup>3</sup> Dated August 26. Force's Archives IV. 1; 954.

<sup>4</sup> November 2, 1774.

<sup>5</sup> Force's Archives IV. 2; 130.

and my last letter was only meant to give you notice of my intention."<sup>1</sup>

Just before leaving the province, the land office caused further trouble, and Eden's opponents charged him with fraudulently granting to Thomas French, a creature of his, land near Fort Cumberland.<sup>2</sup> This charge was apparently based on a misapprehension of the facts in the case. The land west of Fort Cumberland had been reserved until a manor could be laid off for the Proprietary.<sup>3</sup> In February, 1774, French petitioned that the land be thrown open, and the next month, in Eden's absence, the board of revenue decided to grant<sup>4</sup> the prayer, as "the intent and design of the reserve had been fully answered." Eden approved the vote, but Jenifer, the Proprietary's agent, did not, and insisted that no patents should be issued for the land until the Proprietary's pleasure be known. The authorities in England took the part of Jenifer, and instructed the judges of the land office to suspend all further proceedings in the matter.<sup>5</sup> Not only French, but others, "persons of note, who from their situations, were probably apprised beforehand of the measure intended,"<sup>6</sup> had taken out warrants for the land, and Jenifer objected to this as "unjust in reference to the back inhabitants, 'who' stood the brunt of two Indian wars," but had not an equal chance with others for making advantageous locations.<sup>7</sup> Eden, personally, seems to have been free from blame, having done nothing but given formal approval to the findings of his officials.

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<sup>1</sup> Force's Archives IV. 2; 302, 303.

<sup>2</sup> Rowland's Mason II., 214.

<sup>3</sup> Kilty's Land Holder's Assistant, p. 264.

<sup>4</sup> Governor ill, but knew of it before meeting. Minutes of Board of Revenue, March 26, 1774.

<sup>5</sup> Jenifer says Rev. J. Boucher, T. Johnson and others were taking up lands west of Maryland, even west of the Alleghanies.

<sup>6</sup> Kilty's Land Holder's Assistant, p. 297.

<sup>7</sup> May 17, 1774. Board of Revenue. It had been intimated to Eden that persons had infringed on Proprietary reserves west of Fort Cumberland.

The minute book of the board of revenue gives much information as to these western land troubles. This board, composed of the great officers of the province, first met under Eden's presidency on June 19, 1769, and held its last meeting on January 11, 1775. Its control of revenue matters and power of appointment of minor officials who collected the taxes made it an important body. On April 29, 1774, the matter of western lands came before it again, and Jenifer told it: "You must be very sensible that the proprietor's noble predecessors have cautiously avoided giving any offence by granting lands to the westward of the line settled between the Crown and Lord Fairfax; for, although there cannot be a doubt but their fountain head of the South Branch was the spot intended, where the meridian line was to be set off as the west boundary of Maryland, yet I presume they waited for a favorable opportunity of bringing this matter before the King in Council." Such an opportunity he hoped the quarrel between the colonies of Pennsylvania and Virginia as to their boundaries would soon furnish.

In May, George Steuart, one of the judges of the land office, tells the board of revenue that warrants for unoccupied land must be issued if the caution money is paid, and further, that it is unreasonable for the officers to confine Baltimore to narrower bounds than does the charter. This would encourage the Virginians. He intimates that Eden is about to grant the western lands. At this Jenifer asks Steuart and Benedict Calvert, the other judge of the land office, to go with him to dissuade Eden, and states that he cannot see how delay in the grant of lands would prejudice Maryland or encourage Virginians. For himself, he fears encroachments on the Proprietary's lands. Steuart asks him for the names of any intruders, and promises to do justice upon them. The board again decided against Jenifer, and said, if caution money be paid, warrants must issue, and that Jenifer had not made his complaints sufficiently early. He should have told Eden before March who those citizens were who had borne



the brunt of two wars. Eden, from principles of benevolence, had directed the surveyor of Frederick County, which extended to the western boundary of the State, to inform those who had settled west of Fort Cumberland that on application and payment of caution money their lands shall be secured to them. The Proprietary's lands will be protected from encroachments. Indeed, the board say: "We apprehend that the expected emoluments from the proprietor's reservation will be entirely lost if the adjacent lands remain uncultivated; the mountainous situation of the country, and its distance from navigable water, preclude the hopes of an extensive commerce, and unless opportunity be offered to the tenants of interchanging their commodities with the neighboring inhabitants, we conceive but few persons, and those of the lowest estimation, would incline to settle in this solitary part of the province, shut out from the intercourse of mankind."

The decision of the English authorities, before referred to, and the outbreak of the Revolution, prevented further steps being taken under Eden's administration, and this interesting chapter in the history of the greed for western land remained unfinished.

## CHAPTER X.

### RISE OF THE CONVENTION'S POWER.

After an absence of five months in England, whither he had gone to attend to the private affairs of himself and his wife and to his duties as executor of Lord Baltimore, Governor Eden arrived in Annapolis<sup>1</sup> on the morning of November 8, 1774. His absence had prevented him from see-

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<sup>1</sup> His brother Thomas, in whose ship he came, told the Committee of Anne Arundel County that he had brought no tea with him, and would bring no goods for one who would send tea therewith, for which profession the Committee thanked him.

ing the patriotic Annapolitans burn the *Peggy Stewart*, because of her cargo of the obnoxious tea, and had, in a measure, separated him from the contending parties. Eddis tells us "his return to the province in this truly critical" time was "expected with an impatience which sufficiently evinces the sentiments of the public in his favor."<sup>1</sup>

In spite of the proclamation troubles there was no doubt as to the popularity of this man, who was so congenial to the Maryland aristocracy. On the day of his arrival he issued a proclamation notifying the various officers of his return and enjoining them to perform their respective duties.<sup>2</sup> So soothing was his influence upon the people that in the end of December he could write to Lord Dartmouth<sup>3</sup> that "the province has been tolerable quiet since I arrived," though "before that they had, in one or two instances, been second (I think) in violent measures to Boston." He was not blinded, however, by any seeming quiet, but continues: "The spirit of resistance against the tea act, or any mode of internal taxation, is as strong and universal here as ever. I firmly believe that they will undergo any hardships sooner than acknowledge a right in the British Parliament in that particular, and will persevere in their non-importation and non-exportation experiments in spite of every inconvenience that they must consequently be exposed to and the total ruin of their trade."

During that winter Eden was devoting his best energies to conciliating the colonists with such success that "a greater degree of moderation" was thought to "predominate" in Maryland than anywhere else.<sup>4</sup> But these efforts to preserve the public tranquillity were by no means wholly successful. The first convention of the freemen of Maryland had met in June, 1774, after Eden's departure for England. The second, sitting in November, passed resolutions for the

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<sup>1</sup> Letters from America, p. 188.

<sup>2</sup> American Archives IV. 1; 972.

<sup>3</sup> American Archives IV. 1; 1075.

<sup>4</sup> Eddis, p. 200.

organization and drilling of the militia, the purchase of arms and ammunition and the carrying out of the non-importation policy. These measures, which were being carried out during the winter, did not tend towards tranquillity. Another cause for friction was the fact that, in commissioning magistrates for the several counties early in 1775, Eden left out the names of some previously commissioned, doubtless because they leaned too much to the popular side.<sup>1</sup> Complainers said that a junto in Baltimore had found means to attach themselves to men "who have the ear of our too-easy Governor," but it was Baltimore, too, that was the centre of the advanced patriots. Commercial Baltimore and the pioneers of Frederick county were the advanced wing of the patriotic party, while conservative strength was to be found in the aristocratic planters of Southern Maryland and the Eastern Shore.

The Convention met again in April, 1775, and, while it was sitting, came two alarms—one from the North, bringing news of Lexington and Concord; the other from the South, that Lord Dunmore had removed the powder and stores from the Virginia arsenal to the British fleet. On Thursday, April 28, as a result of this, a committee of six was appointed by the Convention to wait on Eden and ask that the provincial arms, powder and stores be delivered to them, lest some ship of war may arrive "whose commander might probably have instructions to seize the same."<sup>2</sup> The Governor consulted with his Council, and they agreed to surrender the arms, powder and stores to the colonels of the militia "under the ancient establishment" if they ask for them.<sup>3</sup> This was yielding to the clamor of the people and even to force, for the militia had been called out to seize the stores if necessary, but it was such a yielding that by it

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<sup>1</sup> American Archives IV. 2; 124.

<sup>2</sup> They told him they feared a servile revolt.

<sup>3</sup> Four colonels each made regular application for 100 stand of arms. Scharf's Maryland, II., p. 179. Eddis pp. 206-208.

"the dignity of government is maintained and the public tranquillity preserved."

Eden wrote to his brother<sup>1</sup> that, though in a state of thorough confusion and hourly expecting an uproar of some sort or other, his course seemed to be satisfactory to all, save possibly "some of our infernal Independents, who are in league with the Bostonians."

The Convention, before it adjourned, appointed a Council of Safety to sit in the interval between its sessions and act as an executive committee. Thus, says Dr. Browne, was a "perfect democratic government existing side by side with the phantom of Proprietary rule," and it speaks well for the tact of both governments that they continued to exist side by side for over a year.<sup>2</sup> The Convention further elected delegates to the second Continental Congress. Eden was unable to dissuade these delegates from going to Philadelphia, but he firmly believed they wished to bring about a reconciliation. He writes to Lord Dartmouth that the Convention acted with moderation, but that, owing to the disturbed state of affairs, he gives up the hope of returning to England at present to attend to his affairs there.<sup>3</sup> He felt that the "invariable attention to the interests of his royal master and the essential welfare of the province," with regard to which, Eddis tells us,<sup>4</sup> Eden conducted himself, demanded his presence in the colony, and so he remained.

The news of the battle of Bunker Hill increased the excitement; the drum and fife were everywhere heard, and all were expected to join the military companies, of which there were two in Annapolis and seven in Baltimore.

On July 18 the burning of the *Peggy Stewart* was recalled by a "second burnt-offering to liberty." Mr. Gildart, of Liverpool, had sent over one Captain Warren with the ship

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<sup>1</sup> April 28, 1775.

<sup>2</sup> Silver's account of the Provisional Government, in the J. H. U. Studies for 1895, is excellent.

<sup>3</sup> Dartmouth writes approving his conduct, July 5, 1775.

<sup>4</sup> Eddis, p. 214.

*Totness*, which carried goods contrary to the association, and was, therefore, plundered and burnt, after she had been run aground in the West River.<sup>1</sup> Eden endeavored in vain to find the offenders and punish them, though he had the satisfaction of knowing that the destruction was condemned by many even of the patriotic party.<sup>2</sup>

A third vessel was saved by Eden's efforts. The scow *Adventure*, commanded by Captain Heazell, brought to Annapolis about seventy intended servants. In the cargo were 200 dozen bottles of porter, several chaldrons of coals and some casks of cheese, which he alleged he intended to dispose of at Madeira. The local Committee of Observation thought this "proceeding a premeditated infringement of the association, and ordered him to return to England, servants and all." The "barbarity of such a measure" was, however, so strongly represented by Eden that the committee allowed the servants to be landed and the vessel to take water and provisions for the journey home. The captain was thought to delay too long in so doing, and the impetuous spirits could with difficulty be restrained from treating the *Adventure* as they had the *Peggy Stewart* and the *Totness*.

## CHAPTER XI.

### ATTEMPTS TO RESTRAIN THE PROVINCIALS.

The clouds were all the time thickening. The convention met for the fourth time on July 26, and remained in session until August 14. It adopted the famous Association of the Freemen of Maryland. This document declared that the inhabitants of the colony are "firmly persuaded that it is necessary and justifiable to repel force by force," and "do unite and associate as one band and firmly and solemnly engage and pledge ourselves to each other and to America,

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<sup>1</sup> Scharf's Maryland, II., 186.

<sup>2</sup> Eddis, p. 217.



that we will, to the utmost of our power, promote and support the present opposition carrying on, as well by arms as by the continental association, restraining our commerce." This document was signed by the members of the convention, and though it expressed a hope for "a reconciliation with Great Britain on constitutional principles," it was felt to be a great step towards breaking free from allegiance to the mother country.

Eden now felt that a stand should be made. The power of the Council of Safety was irksome to him. This union of the three departments of government in one body seemed to him to constitute "a real and oppressive tyranny in the very heart of the province." The proceedings of the convention were published on August 17, and on the 19th Eden called a meeting of the Council "to take advice how I ought to conduct myself and what steps I should take in opposition" to the Association. It had been resolved by the convention that all save the Governor's household must subscribe to the Association.<sup>1</sup> No regard was paid to the oaths of allegiance of the customs officers, the councillors, or other magistrates. The sole exception arose from the convention's kindly feeling toward Eden.

Only a few councillors appeared, and nothing was done until the following Monday. Then, at an adjourned meeting, where eight members beside Eden were present, he proposed issuing an address, the draft of which he had prepared. This address is a State paper of a kind far different from that which proceeded from British officials of the period. It is not dictatorial, but conciliatory; it is not an order, it is an appeal. Eden's sound common sense told him the futility of assuming a mandatory position. His first sentence ran thus: "To men warm in the pursuit of liberty, it is not easy to prescribe bounds, and he can be no friend of his kind who views not even the excesses of such with an indulgent eye." Hith-

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<sup>1</sup>Eddis sent home his wife, and accepted Eden's invitation to become one of his household. Letters from America, 221.

erto, he continues, he has overlooked the "thousand instances of intemperate zeal that have occurred in Maryland, lest in thwarting the citizens he should but 'exasperate' them and because he relied on their 'natural good sense,' their love for England, 'our common parent,' and their veneration 'for the best King and the best Constitution' in the world." He had hoped that errors committed "under the noblest passion that can animate the human breast 'would not be ruinous,' nor be 'persevered in.'" Eden appealed to them to confirm his statement that, whilst he could think they sought "true, genuine, constitutional liberty," he was far from denying their claims, but rather pleaded in their behalf, and even represented in the most favorable point of view "proceedings which seemed to him 'far from justifiable.'" But now he must warn them that they "stand on the brink of a precipice." The Association pledged the Marylanders to "promote and support" "opposition by arms to the British troops." He feels that it is the last opportunity; that "there are already difficulties enough in the way of a reconciliation with the mother country," and beseeches them, "for God's sake not to increase them." "This is no place for me to say, authoritatively, what a conspiracy is, or what treasons and rebellions are; but I owe it to you to say thus much at least, that I would not for the world see the name of a man I esteem, in the list of subscribers to the Association."

The Council divided equally on the question of publishing this address to the people, and all asked Eden not to give the decisive vote, but to wait until the four absent councilors, hitherto kept away by wind and weather, should appear. The next day, however, those who had been in favor of issuing the address were seized with a "general timidity," and the address remained unpublished.

As Eden truly wrote to Lord Dartmouth: "It has ever been my endeavor, by the most soothing measures I could safely use, and yielding to the storm, when I could not resist it, to preserve some hold of the helm of government, that

I might steer, as long as should be possible, clear of those shoals which all here must, sooner or later, I fear, get shipwrecked upon." It was the consistent pursuance of this policy that enabled him to remain so long at his post.

He did not underestimate the danger nor the critical character of the time. Daniel of St. Thomas Jenifer, one of his own Council, had subscribed the Association and accepted a position on the Council of Safety, thinking that as "things have gone so far, people ought to risque everything," and that moderate men, such as he, might be able to prevent disorder and violence. This sort of thing made Eden fear that the authority he had "hitherto supported will cease to be of any great avail." He thought there were many in Maryland who would assert the rights of Great Britain and their own liberties if there were either troops or ships of war to support them. Without this support, they were being compelled to yield, "to muster and sign associations, etc., to preserve their lives and property without any further view, except perhaps learning the use of arms, so as to be on a level with those they are at present by force connected with and ready to desert from." Many others, "gentlemen of property, character and family, are leaving America," such as the Dulanys and Rev. Mr. Boucher. Eden had "suppressed some daring attempts at imminent hazard" of his life, as he writes in this long despatch to Lord Dartmouth. He had but little hope of stemming the tide successfully: "An assembly of rash people soon becomes a lawless and ungovernable mob, which grow desperate from necessity, arising from a total neglect of their peaceable trades and occupations, and kept constantly heated by the incendiary harangues of their demagogues, are a formidable enemy to encounter with words only, founded on reason, and arguments of moderation."

The despatch<sup>1</sup> from which the above quotations were made shows clearly Eden's character and situation, and is

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<sup>1</sup> Letter printed in Schart's *Maryland* II., 1878, ff., with total misconception of its character.

further worthy of note from the fact that the answer to it was one of the intercepted letters, of which more anon. Eden felt he had revealed his thoughts so completely in this letter that he begged its contents be considered absolutely confidential.

Two days after this letter had been sent, on August 29, the Council of Safety, some of whose members at least had seen the proposed address, wrote to the Governor<sup>1</sup> to dissuade him from issuing a proclamation or even an address, less imperative than a proclamation, which they think would not be more conciliatory. They feel that "the defence of liberty requires extraordinary exertions," and "observe with pleasure that, though your excellency can't approve, yet your humanity inclines you to view them with indulgence."<sup>2</sup> With rare consideration from political antagonists, the new executive express to the old their appreciation of his "delicate situation," having duties both to England and to Maryland, and assure him "that independence of Great Britain is not the aim or wish of the people of this province." Eden was wise enough to yield to the entreaty of the Council of Safety. Even Eddis had feared that a decided disapprobation of the present proceedings "would effectually cancel his merits, subject him to calumny and censure, and render his longer continuance in Maryland impossible."<sup>3</sup>

The latter part of 1775 saw no very stirring events occurring on the soil of Maryland. The few remnants of authority were taken gradually from the provincial government. Rumors of the arrival of men-of-war disturbed the people from time to time. At one such rumor during that autumn there was held a public meeting in Annapolis, and an address was presented by it to the Governor, stating that "if a vessel belonging to His Majesty should be stationed in our

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<sup>1</sup> Maryland Archives I., p. 72. The Archives are published in several series. All the references in this work are to the Revolutionary Series.

<sup>2</sup> Maryland Archives I., p. 73.

<sup>3</sup> Letters from America, 223.

harbor," they would supply the same with every necessary, at a reasonable price, and cautiously "would avoid any cause of contention with the officers or the crew."<sup>1</sup>

The Council of the Governor met more seldom than formerly, and, when in session,<sup>2</sup> discussed whether they ought to receive Continental currency, and how to secure men to take the high and responsible office of sheriff, a position members of the patriotic party were disinclined to keep in these times of contention. There was some little personal difficulty also about the collection of the Governor's salary, due to the delay in the settlement of Lord Baltimore's estate.

For the rest, things went on rather quietly. The Governor was chagrined to have his letters detained for inspection before they were given him;<sup>3</sup> he watched with interest the growing fame of that Virginia colonel with whom he had been on such friendly relations;<sup>4</sup> he was disturbed a trifle by the theft of an old and mended seine from the bottom of his garden,<sup>5</sup> or was more gravely put out by the miscreant who broke open his stables and let out his gray stallion.<sup>6</sup> The old friendship and correspondence with Maryland friends, such as Rev. John Montgomery, of Georgetown, and George Fitzhugh, of Rousby Hall, was kept up. The Governor spent part of the Christmas season of 1775 with the latter, and enjoyed almost the last quiet days of his official life.<sup>7</sup> The old gayety of Annapolis and the province had departed, however, and all men spoke of the war.<sup>8</sup> The quiet in Maryland contrasted most favorably with the turmoil in Virginia, and the difference was largely due to the different procedure of Dunmore and Eden. The latter, as

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<sup>1</sup> Letters from America, 238.

<sup>2</sup> American Archives IV. 3; 1570.

<sup>3</sup> Letters from America, 240.

<sup>4</sup> Letters from America, 236.

<sup>5</sup> *Maryland Gazette*, Oct. 25, 1775.

<sup>6</sup> *Maryland Gazette*, Jan. 11, 1776.

<sup>7</sup> Maryland Archives I., 505, 519.

<sup>8</sup> Letters from America, 241.



late as January 16, 1776, still "continued to receive every mark of attention and respect," as Eddis tells us, "while the steady propriety of his conduct in many trying exigencies reflects the utmost credit on his moderation and understanding."<sup>1</sup>

He was in perfect health, and indefatigable in the endeavor even yet to bring about a reconciliation. The Maryland convention had so far defied England as to stop the passage of the mail through the province,<sup>2</sup> yet Eden wrote home on January 25 that he is "convinced the people of Maryland are far from desiring an independency, but would consider it a most happy event to be in precisely the same relation to the parent State as at the conclusion of the last war."

This letter was probably the result of a conference between Eden and some of the prominent members of the provincial convention. On January 15, Jenifer wrote from Stepney to Charles Carroll, barrister, that Governor Eden was visiting him, and was "very desirous and willing to co-operate with you and Mr. (Matthew) Tilghman and such other gentlemen of the convention as are willing to disperse the cloud that has almost overshadowed and is ready to burst upon us."<sup>3</sup> With this object in view, he invites Carroll, Tilghman, Thomas Johnson, James Holliday and Thomas Stone to dine with him at some convenient day.

Carroll answers at once that if the gentlemen come they fear they will not be able to return to the convention in time, and requests Jenifer and the Governor to dine with the same company at his house on Friday, even though, as a good Roman Catholic, Carroll could not then give them meat.<sup>3</sup> The dinner came off,<sup>4</sup> and a free conversation was engaged

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<sup>1</sup> Letters from America, 257.

<sup>2</sup> *Baltimore American*, Dec. 11, 1775, No. 104, p. 415.

<sup>3</sup> American Archives IV. 4; 680.

<sup>4</sup> A story is told in the *Baltimore Chronicle* for 1833, which seems to refer to this dinner. According to it, at the dinner, Eden said: "It is understood in England that the Congress are about forming a treaty of alliance with France." To this Johnson answered: "Gov-

in, as a result of which Eden wrote the letter last referred to, and enclosed the instructions to the Maryland delegates in Congress, as containing the true sentiments of the people."<sup>1</sup>

These instructions<sup>2</sup> had been passed on the 12th instant, and were the first ever given to the delegates. They were extremely moderate in tone, refer to the "mildness and equity of the English Constitution, under which we have grown up and enjoyed a state of felicity not exceeded by any people we know of," and express a wish for "a reconciliation with the mother country, upon terms that may ensure to these colonies an equal and permanent freedom." The delegates were "to secure the colonies against the exercise of the right assumed by Parliament to tax them and to alter their constitutions and internal polity" without their consent. They were prohibited from assenting to a declaration of independence, an alliance with a foreign power, or any confederation which would necessarily lead to separation, unless in their judgment it should be absolutely necessary to preserve the liberty of the United Colonies. If any of these measures be passed by Congress without their assent, they must submit them immediately to the convention.

Eden's letter to the home authorities, and several private ones which he assured the Council, on his honor, contained

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error, we will answer your question, provided you will answer one for us." To this Eden agreed and then Johnson said, "Well sir, we will candidly acknowledge that overtures have been made to France, but that they are not yet accepted. Now, sir, we understand that the king, your master, is about subsidizing a large body of Hessians to join his forces to come over to cut our throats." Eden responded that he believed that to be the truth, when Johnson rejoined: "The Hessian soldier that puts his foot on the American shore will absolve me from the allegiance to Great Britain;" while Chase exclaimed, "By God, I am for declaring ourselves independent." "The Governor immediately dropped his knife and fork and did not eat another mouthful." I attach little credence to the story.

<sup>1</sup>Scharf's Maryland II., 218.

<sup>2</sup>March 5, 1776. Gen. Charles Lee writing from Williamsburg speaks of these resolutions in most bitter terms. *Memoirs*, p. 381.

nothing unfriendly to America, were forwarded to the Maryland Deputies in Philadelphia, with a letter from the Council of Safety itself, expressing the belief that this step "cannot be productive of an ill-effect; it may be of great service. It may possibly bring about some overture to a general reconciliation." The Council further urge the Maryland Deputies to see that the letters are not opened, but rather forwarded at once.<sup>1</sup>

The convention met December 7, 1775, and adjourned January 18, 1776.<sup>2</sup> Besides trying this last measure of reconciliation, they made full preparations for the continuance of the war. The military forces of the State were thoroughly organized, provision was made for a gunlock manufactory, committees were appointed for raising, clothing and victualling the forces.

The General Assembly of the province had been continually prorogued by the Governor since April, 1774, and now he and the Council of Safety stood alone in the colony, face to face with each other. The other provinces could not understand Maryland's delay. The confidence reposed in the Committee of Safety, the popularity of the Governor, the conservative character of the Maryland men perplexed and disturbed the radicals of Virginia and Massachusetts. Because they were not so impetuous, and more inclined to wait until their footing was sure, many outside of the province were inclined to think them halting and lukewarm in the patriotic cause. Month after month passed, and nothing seemed to be done. There was special reason why Maryland should be attached to the past. The Proprietary Government, in the careful words of McMahon,<sup>3</sup> "in the protec-

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<sup>1</sup> Maryland Archives I., 108. Sparks's *Life of Lee* in *Lee Papers* IV., 276, says the "influence of Eden was visible in these transactions," and refers to even the effect upon the foremost patriots of Eden's "conciliating manners and private character."

<sup>2</sup> New Council of Safety chosen on January 17; Governor's house-held still to be free from association, January 16.

<sup>3</sup> McMahon *History of Maryland*, p. 425.

tion of public liberty and private rights, and in all the securities which these derive from self-government, gave peculiar freedom and privilege to the subject," and "was generally so administered as to promote the interests and secure the attachment of the colony. That attachment was of the purest character. It was cherished for their free institutions, and not for the personal interests of those who administered them." But the personal character of the Governor also had much to do with keeping their attachment to those institutions warm.

## CHAPTER XII.

### THE COMING OF THE "OTTER."

Little of importance now occurred until the beginning of March. The government had passed completely into the hands of the Council of Safety, and Eden was little more than a hostage, possessing only the simulacrum of his former authority. Nothing could have shown this more clearly than the arrival of the *Otter*. This event also showed the confidence still reposed by the colonists in their Governor and their readiness to resist attack. Maryland had hitherto enjoyed an absolute immunity from hostile visits of the fleet, a favor to which the favorable representations Eden made of the temper of her people no doubt largely contributed.

Now, however, about 7 o'clock on the evening of the 5th of March came news by the pilot boats to Annapolis that a ship of war and two tenders were under sail on their way up the bay. The night was extremely dark and tempestuous, the rain falling in torrents, but, in spite of that, many persons in Annapolis began to remove their goods at once and prepare for flight.<sup>1</sup> In their terror it was entirely forgotten that

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<sup>1</sup> *Baltimore American*, No. 117, March 13, 1776. Maryland Archives I., pp. 201-241. Letters from America, pp. 258, ff. *Maryland Gazette*, March 14, 1776.



an attack on the city was extremely improbable while "a Governor under the authority of Great Britain was a resident in the town," and had transmitted no complaint "relative to the treatment experienced by him."<sup>1</sup> The Council of Safety met at once and sent expresses to the Baltimore Committee and to the militia colonels of the vicinity.<sup>2</sup> Arms were sent for from Frederick county, and the Continental Congress was asked for powder.

Eden was equally prompt. He "resolved to pursue every eligible method that might effectually remove the apprehensions so universally entertained," and, therefore, made immediate application to the Council of Safety that a flag of truce be sent on board the ship as soon as she appeared.<sup>3</sup> This was determined upon, and on the 7th of March Eddis was sent by the Council with the flag on board the ship, which proved to be the *Otter*, Captain Squires, with eighteen guns. She had with her two tenders, one of six carriage guns, the other armed with four swivels only. On her way up the bay<sup>4</sup> she had taken a New England schooner laden with flour in the Patuxent, and had burnt a shallop laden with oats off the mouth of the Severn. The high wind prevailing on the 6th had prevented the vessel proceeding up the bay,<sup>5</sup> but, on the 7th, she pushed northward and anchored off the mouth of the Patapsco, where Eddis came on board. The tenders pressed on and took a ship laden with wheat and flour, which had run aground in the Patapsco.

By this time the people had somewhat recovered from their terror and had surmised the true purposes of the *Otter's* visit—to obtain fresh provisions and to capture the privateer *Defence*, Captain James Nicholson, which was fitting out in Baltimore.

Eddis bore with him to the *Otter* a letter from Eden, and

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<sup>1</sup> Maryland Archives I., p. 529.

<sup>2</sup> Maryland Archives I., p. 203.

<sup>3</sup> Maryland Archives I., p. 260.

<sup>4</sup> Maryland Archives I., p. 219.

<sup>5</sup> Maryland Archives I., p. 217.



took pains to assure Captain Squires of the moderation of the Marylanders, their aversion to independence and their respectful treatment of the Governor. Captain Squires met these overtures affably,<sup>1</sup> assured Ellis that he intended no harm to Annapolis, nor any other town, that he would pay market price for the fresh provisions, in search of which he had come, and that he had given orders to his men not to fire unless attacked, nor to commit any depredations.<sup>2</sup> A letter embodying these same sentiments was sent by him to Governor Eden<sup>3</sup> when Eddis returned on the next day. Captain Squires apologized for the burning of the vessel off the mouth of the Severn, and said it was done without order and by an inconsiderate midshipman.

Meantime, the *Defence* came forth from Baltimore harbor, "manned with a parcel of buckskin heroes and other brave fellows" and accompanied with several small vessels to assist her "in case of an engagement, which would have been dreadful," as "Nicholson intended to grapple at once."<sup>4</sup> There were many who were sanguine enough to hope that the *Defence* might even be able to take the British ship, but the combat did not take place. The Baltimore prize, which was left in the charge of the tenders, was retaken by the *Defence*, and the latter vessels might have been forced to surrender to the privateer had not the *Otter* come to their assistance. Captain Squires, seeing the *Defence* was fully prepared for battle and could not be taken by surprise, did not wish to try the consequences of a battle,<sup>5</sup> but dropped down the bay to Annapolis, while the *Defence*, after picking up some small craft which the British had taken, returned to Baltimore. On the afternoon of Saturday, March 9, the *Otter* came to anchor off Annapolis and sent ashore two officers

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<sup>1</sup> Maryland Archives I., p. 263.

<sup>2</sup> Maryland Archives I., p. 264.

<sup>3</sup> Given in full in Purviance's *Baltimore in the Revolution*, p. 184.

<sup>4</sup> Maryland Archives I., p. 227, 268.

<sup>5</sup> Maryland Archives I., p. 237.

under a flag of truce.<sup>1</sup> These bore a letter to the Governor and had conference with Jenifer, president of the Council, and Tilghman. They "behaved very politely and on some subjects were free and communicative."<sup>2</sup> The seamen who accompanied the officers continued in their boat at a small distance from the shore, where "they supported a friendly conversation with the provincial military, who were stationed on the beach to preserve regularity."

Captain Squires, in his letter to Eden, desired provisions and permission for one of his tenders to take unmolested a New England sloop lying in the Severn laden with bread and flour. Eden laid this letter before the Council, and was informed by them<sup>3</sup> that, in time gone by, they would have been glad to furnish any of His Majesty's ships with provisions, but, after Captain Squires' conduct, especially in suffering the vessel to be burnt in the mouth of the Severn, they cannot do so. The request to be allowed to take the New England vessel unmolested the Council took as an insult, and rendered no further answer to it than by putting a guard of fifty men on board of her.<sup>4</sup>

In their communication to Eden of their refusal to furnish provisions to Squires the Council are careful to show their appreciation of the Governor's efforts to prevent a conflict, and say, "We are much obliged to your Excellency for the Pains you have taken to preserve the Peace of this Province, and beg that you will still exert your Endeavours for the Restoration of those happy days that we enjoyed under a Constitutional Dependence on the Mother Country."<sup>5</sup>

Encouraged by this mark of confidence, Governor Eden made a final and successful effort to have the incident end pleasantly. His answer to Squires was such that on the next morning, it being Sunday, a flag of truce was sent

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<sup>1</sup> Maryland Archives I., 226.

<sup>2</sup> Maryland Archives I., p. 237.

<sup>3</sup> Maryland Archives I., p. 233.

<sup>4</sup> Maryland Archives I., p. 237.

<sup>5</sup> Maryland Archives I., p. 233.

ashore with some prisoners, "who said they had been treated with great humanity." This fact secured the *Otter* what she desired, for "in return, it was thought proper to compliment the officer with two quarters of beef."<sup>1</sup> That afternoon the *Otter* sailed down the bay. It was almost Eden's last service to his province. His few remaining weeks were largely occupied in preserving his own safety, and in preparing for his departure from Maryland.

## CHAPTER XIII.

### THE INTERCEPTED LETTERS.

The rest of the month of March passed without exciting events; but, with the coming in of April, the whole province was stirred, on account of the interception of certain letters written to Governor Eden. Sir George Germain had succeeded Lord Dartmouth in the colonial office, and on him devolved answering Eden's important dispatch of the 27th of August. Germain had wonderful capacity for blundering, and, forgetting the caution that Eden had given as to the danger of letters being opened before reaching their destination, he used in his reply such expressions as these: "Your letter contains a great deal of very useful information, and your confidential communication of the characters of individuals, more especially of such as come over into England, is of great advantage." He assures him that the King is much pleased with his conduct of the government, and that his letter will be kept a profound secret. Then, as if the foregoing was not enough to rouse the suspicions of every son of liberty, he adds, what was sure to turn those suspicions into a firm belief that Eden had been writing in a most unfriendly way to those at home. "An armament, consisting of seven regiments and a fleet of frigates and small ships, is now in readiness to proceed to the Southern

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<sup>1</sup> Maryland Archives I., p. 242.

Colonies, in order to attempt the restoration of legal government in that part of America." This armament is bound for North Carolina, or Virginia, and, if it goes to the latter colony, "it may have very important consequences to the colony under your government, and, therefore, you will do well to consider of every means by which you may, in conjunction with Lord Dunmore, give facility and assistance to its operations."<sup>1</sup>

A more injudicious letter than the above can scarcely be imagined. It was sure to lead heated partisans to the conclusion that the leading men of the colony were marked out by Eden for condign punishment, in case of success of the British; that he was about to aid the hated Lord Dunmore, and that the armament, doubtless sent for by Eden, would overthrow Maryland's liberty. It was little wonder that Thomas Stone, a moderate man, wrote thus to Jenifer, of Germain's letter: "Independent of everything else, it is very suspicious; but, taking Mr. Eden's conduct and the letter from his brother (who must know his sentiments) into consideration, I think greatly lessens the charge," which would be made had they Germain's letter alone.<sup>2</sup>

The letters from Eden's brother, William, referred to above, came in the same packet as the one from Germain. They were two in number, and were written<sup>3</sup> on November 15 and December 24, 1775. The earlier one of these private letters speaks of Eden as "a moderate man," and one who wishes "well and kindly to both parties, at the same time that you dislike the extremes of the language and conduct pursued by both;" but the later one shows more clearly how Eden's position was regarded by his own family. In it William Eden used the word "you" repeatedly to include both the colonists and his brother, and speaks of the inter-

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<sup>1</sup> Letter dated December 22, 1775. Printed in Maryland Archives I., p. 344.

<sup>2</sup> Letter of April 24, 1776. American Archives IV. 4; 1047. Maryland Archives I., p. 383.

<sup>3</sup> Maryland Archives I., p. 343 to 346.

ests of both as identical. If it be said this is not of great importance, it may at once be answered that this could have been written of no other royal Governor in America for years before this date. William Eden uses such phrases as these: "You who have rather a predilection for America;" "you will neither hear reason or act reasonably." To his brother's conduct in his difficult position William Eden gives unqualified praise,<sup>1</sup> and says, "you are acting the dignified, determined part, and are showing yourself a Friend to both sides of the Atlantic. You have all due Honour for it here, and I hope you will be treated with equal Candour on your own Side of the Atlantic." The packet of letters also contained two more; a second one from Germain,<sup>2</sup> enclosing a copy of the offer to pardon all who should cease resistance, and conveying the information that a commission would shortly be sent to America; and one from Lord Dartmouth, which was written as far back as July 5, 1775, and praised Eden's conduct in his government and his determination not to leave Maryland to attend to his family affairs in England until the storm were over. This letter also orders Eden to render all help possible to the British forces, and expresses satisfaction with what Eden has written of the moderate counsels prevailing in Maryland.<sup>3</sup>

These letters, whose contents we have been so particular in describing, because of their important consequences, being forwarded duly across the Atlantic, came into possession of some one in Lord Dunmore's armament, and were there held until there should come a favorable opportunity of forwarding them to Eden.

The opportunity came at last. Mr. Alexander Ross came to the Council of Safety about the first of March, bringing a letter of introduction from two members of the Continental

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<sup>1</sup> Maryland Archives I., p. 346.

<sup>2</sup> Dated December 23, 1775. Maryland Archives I., p. 345.

<sup>3</sup> Maryland Archives I., pp. 341, ff., American Archives IV., 4, 961.



Congress.<sup>1</sup> He desired a passport to Lord Dunmore, that he might transact some private business with him; but the cautious Council of Safety merely gave him a passport and letter of recommendation to Virginia Council of Safety.<sup>2</sup> Ross failed to get from them a passport, but went to Dunmore without one, and on his return took with him the packet of letters addressed to Governor Eden.<sup>3</sup> He started out with a small vessel, and was overtaken and captured by Capt. James Barron. The papers were taken from him and sent to Williamsburg, though he himself was suffered to go free. At Williamsburg the letters were given to Governor Charles Lee, who was stationed there in charge of the Southern Department.<sup>4</sup> Lee was then playing the role of the pronounced patriot, and was prompt to seize this opportunity of showing devotion to the patriotic cause. He at once consulted with the Virginia Council of Safety, in session at Williamsburg, and on April 6 they decided the proper course to pursue was to send copies of the letters to the Continental Congress and the Baltimore County Committee of Observation. Lee had stopped in Baltimore on his way South, and had had a long talk with Purviance, chairman of the local committee. The latter, who had just been successful in planning the measures taken by the *Defence* to repulse the *Otter*, was somewhat inclined to depreciate the vigor and energy of the Council of Safety.<sup>5</sup> He represented to Lee that the Council was "timorous and inactive," and both Council and Convention were "afraid to execute the Duties of their Stations." As a result, the Virginia Council omitted to send the Maryland Council these letters, "which

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<sup>1</sup> Maryland Archives I, p. 185.

<sup>2</sup> Maryland Archives I, p. 207.

<sup>3</sup> Maryland Archives I, p. 340. See Eddis, p. 279, ff.

<sup>4</sup> Purviance, p. 50. See Sparks's *Life of Lee*, American Biography vol. XVIII, and Lee Papers IV, p. 276. The letters, as revealing the ministerial plan of campaign, were of great help to the Virginians in preparing to resist the British.

<sup>5</sup> Maryland Archives, p. 347.

open the Schemes of Administration to us in a more explicit Manner than any other Intelligence we have been able to procure;" but sent them to Baltimore, requesting that they be forwarded to Philadelphia.<sup>1</sup>

With the Virginia letter to the committee, came a private one from Lee to Purviance.<sup>2</sup> It is written in theatrical style, and states that he knows not "to whom I can address this most important note with so much propriety and assurance of success as to yourself. The crisis will not admit of ceremony and procrastination. I shall, therefore, irregularly, address you in the language and with the spirit of one bold, determined, free citizen to another, and conjure you, as you value the liberties and rights of the community of which you are a member, not to lose a moment, and in my name (if my name is of consequence enough) to direct the commanding officer of your troops at Annapolis immediately to seize the person of Governor Eden. The sin and blame be on my head. I will answer for all to the Congress."<sup>3</sup>

These letters arrived in Baltimore<sup>4</sup> on Sunday, April 14, and a meeting was immediately summoned to consider them. The committee determined,<sup>5</sup> without dissent, to send them to Congress at once, under care of Lieutenant David Plunket, and to send other copies on the morrow to the Council of Safety. Feeling the packet of too much importance to be intrusted to a common express, they resolve that three of their number take it to Annapolis, and there, joining with themselves a fourth member then in Annapolis, present it to the Council.<sup>6</sup> With the packet for Congress went an un-

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<sup>1</sup> Maryland Archives I, p. 359. American Archives IV, 5, pp. 929 and 1517.

<sup>2</sup> Maryland Archives I, p. 315; Lee Papers I, p. 381; Purviance, p. 50.

<sup>3</sup> Maryland Archives I, 410. Lee states this letter was read to Virginia's Committee of Safety and approved by them.

<sup>4</sup> Maryland Archives I, p. 358.

<sup>5</sup> Purviance, p. 191. Maryland Archives I, p. 359.

<sup>6</sup> Maryland Archives I, p. 360.

signed letter from Purviance to John Hancock, containing a copy of Lee's letter to the former.<sup>1</sup> In this the supposed timidity of the Council was detailed,<sup>2</sup> and Purviance represented "himself as an object against whom the intentions of the Council of Safety are levelled," and, as evidence of this, he stated that one of the members of that body said he was "a warm man or a hot-headed man, whose power must be pulled down, or he would throw things into confusion."<sup>3</sup> The packet to Congress was sent off at 4 A. M., Monday morning, that to Annapolis was brought more leisurely, and reached there about 3 P. M. on Monday.<sup>4</sup> The Council did nothing that evening, such was their confidence in the Governor; but the next morning, the 16th of April, they appointed Messrs. Charles Carroll, Barrister, and John Hall, members of their body, to wait on Eden, and asked Wm. Paca, who was in the city, to go with them.<sup>5</sup> This delegation was directed to ask the Governor for his letter to Lord Dartmouth, in answer to which Germain wrote the intercepted letter, and, if they failed to receive that, to ask his parole that he will not leave Maryland before the convention meets on May 27.

The delegation waited on the Governor, and were told by him that he sent away the copy of that letter, with all his important papers, during the preceding fall; that they might be convinced there was nothing in it unfriendly to the province, since otherwise troops would have been ordered there; "that he had not endeavoured to enflame the Ministry, by traducing the Characters of Individuals, some he had spoke well of, others he had recommended as Sufferers. The Gentlemen of the Congress he had spoken of acting in the Line of Moderation." The synopsis of the letter itself, which has

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<sup>1</sup> Purviance, p. 195. Maryland Archives I, p. 377.

<sup>2</sup> Maryland Archives I, p. 347.

<sup>3</sup> Maryland Archives I, p. 380.

<sup>4</sup> Maryland Archives I, p. 354.

<sup>5</sup> Maryland Archives I, pp. 333, 340.

been already given, shows us that the Governor spoke the exact truth to the delegation.

When they asked for his parole,<sup>1</sup> he complained of being unjustly suspected, and asked to have until noon of the next day, Wednesday, before giving a definite answer.

Before that answer came, several things of importance had occurred. Lieutenant Plunkett and his packet of letters had arrived in Philadelphia on the morning of Tuesday, April 16, just before Congress met.<sup>2</sup> After the minutes of the preceding day had been read, Hancock began to read Purviance's letter to him, and soon saw from its tone that it was not intended for Congress. He then stopped reading it, but being desired to go on, did so, reading it through. Although the name of the writer was not known, the Maryland delegates at once conjectured it to be Purviance, and even claimed they recognized the handwriting.

As soon as the reading was finished, Thomas Johnson moved to send the original, or a copy of it, to the Maryland Council.<sup>3</sup> This was warmly debated, but finally postponed until the following day, that the subject of the other letters might be discussed. After discussion it was resolved that there was great reason to believe that Eden has carried on a correspondence,<sup>4</sup> "highly dangerous to the liberties of America," and that the Council of Safety of Maryland be earnestly requested, immediately, to seize the person and papers of Governor Eden and "such of the papers as relate to the American dispute, without delay, to be conveyed safely to Congress." They also request the Council to seize Alexander Ross, and send his papers to Congress. These resolutions were sent<sup>5</sup> under cover of a letter from Hancock, and were received in Annapolis by the Council on Thursday, April 18.<sup>6</sup>

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<sup>1</sup> Maryland Archives I, pp. 334, 340.

<sup>2</sup> Maryland Archives I, p. 347. Purviance, p. 195.

<sup>3</sup> Maryland Archives I, p. 348.

<sup>4</sup> Maryland Archives I, p. 335.

<sup>5</sup> Maryland Archives I, p. 334.

<sup>6</sup> Maryland Archives I, p. 349.

After the resolves had been passed, the Maryland delegates moved that the letter sent by Purviance to Hancock be immediately transmitted to the Maryland Council, that they "might have an opportunity of vindicating your Honour against the malicious charges."<sup>1</sup> A warm debate followed, lasting several hours. The Maryland men insisted that "the letter, containing the most severe reflections" on their Council, ought not to be concealed; that it was absolutely necessary "that the dignity of the executives of every province should be supported if properly conducted," and that if there was any suspicion resting on any public body, it should be made known to its constituents, that it might be replaced by another. Already the writer of that letter had caused Virginia to be suspicious of Maryland, and Maryland's representatives insisted that justice be done to the "injured characters" of the Council.

The opposers said the letter was confidential, that there was no suspicion raised in Congress by it, and that the mischief produced by publishing the letter would be greater than any good that could result from it.

When the vote was taken it was found that three colonies voted to request the President to lay the letter before Congress, while five voted against it, and the vote of one was divided. The motion was lost, and the Maryland delegates wrote to the Council that they felt "this treatment to you and our province to be cruel and ungenerous to the last degree." The next morning, April 18, the delegates waited on Hancock to ask for the letters, "but he refused to see us."<sup>2</sup>

Let us now turn to Baltimore and take up the course of events there from Sunday night. At the meeting of the committee of observation that night at Purviance's house,<sup>3</sup>

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<sup>1</sup> Maryland Archives I, p. 351. Lee Papers II, 141.

<sup>2</sup> American Archives IV, 4, 968. Maryland Archives I, p. 352.

<sup>3</sup> Maryland Archives I, p. 363.



it seemed to be the general opinion that, if Captain Nicholson's tender were there, "it would be proper to dispatch her with some men to Annapolis to wait the orders of the Council."

On Monday morning<sup>1</sup> the news came that Capt. Jas. Nicholson had returned from Chestertown. Purviance sent for him at once, told him the purport of the dispatches received the day previous, and what use for his boat had been thought of on the previous night. Purviance observed that, if the Governor, whose character he thoroughly misunderstood, had escaped from Annapolis, the tender "would be the properest vessel to pursue after him, as she could both row and sail."<sup>2</sup> Nicholson agreed as to the propriety of the measure, and consented to get his boat ready and to send her in charge of one of his officers. Purviance saw Major Mordecai Gist and obtained his consent to send Captain Smith with a detail of men in the tender, and next went in search of Capt. Samuel Smith, afterwards prominent in national politics.<sup>3</sup> He was found exercising the three companies stationed in Baltimore, and was told by Purviance "that an affair of the greatest consequence demanded my attendance; that there would be occasion for eight or ten of my men under my command to go in Captain Nicholson's tender."<sup>4</sup> Smith, therefore, shortly dismissed the troops, selecting ten good men and a sergeant, and ordering them to be in readiness at half-past one. He then went to Purviance's, expecting to find the committee, but saw no one save its chairman, who for the nonce had assumed full executive power. Smith was then shown the letters, and, agreeing as to the need for haste, went in search of his commanding officer, Major Gist, whom he did not find.

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<sup>1</sup> Maryland Archives I, p. 370.

<sup>2</sup> Maryland Archives I, p. 364.

<sup>3</sup> Smith wrote an account of this on Dec. 31, 1821, and sent it to T. W. Griffith. There are no new facts in it. The MS. is in the Maryland Historical Society Library. Maryland Archives I, p. 364.

<sup>4</sup> Maryland Archives I, p. 390.

Purviance, meantime, according to his story, saw most of the gentlemen<sup>1</sup> who had been at the meeting the night before and obtained their approval of such use of the tender. About dinner time, Captain Smith met him and told him that he awaited orders. Of these Purviance says he had not before thought. "The committee was then broke up for dinner." So "without the Concurrence or Advice of any Person," Purviance very hastily wrote out orders, which he delivered to Major Gist, signing them as chairman of the committee.

These instructions<sup>2</sup> were: First, to proceed in the tender to Annapolis with as many armed men as should be necessary. Should the Governor's boat be met on the way, "by all means" they must try to board her, and, in case Governor Eden, Secretary Smith or Alexander Ross be on board, they are to be seized, with all their papers, and instantly brought "under the strictest guard," not to the Council of Safety at Annapolis, but to Baltimore. In case the boat be not seen on the way, on arriving at Annapolis the tender is to lie at a distance and the men are not to be allowed to appear in numbers on deck, lest alarm be given. Captain Smith is to go ashore and deliver a letter given him for the Baltimore deputation, which went over that morning, and follow their directions thereafter. Blunderbusses and any necessary quantity of arms are to be taken, and the officer in command of the vessel is to be consulted with in everything. The men are to know nothing of the purpose of the expedition, "at least until it comes to the execution."<sup>3</sup>

These instructions were endorsed by Major Gist, and given by him to Captain Smith at Purviance's house.<sup>4</sup> The letter sent to the Baltimore deputation by Purviance is a brief statement of the facts in the case, and suggests that if

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<sup>1</sup> Maryland Archives I, p. 364.

<sup>2</sup> Maryland Archives I, p. 374.

<sup>3</sup> American Archives IV, 4; p. 930; Maryland Archives I, p. 388.

<sup>4</sup> Maryland Archives I, p. 391.

Eden have escaped, he may yet be overtaken at Colonel Fitzhugh's, where he will probably stop. It states that the expedition is to be at their and the Council's command, and can return instantly in case there is no occasion for its services.<sup>1</sup>

Captain Nicholson also wrote instructions<sup>2</sup> to Lieut. John Nicholson, whom he placed in charge of the tender. After landing Captain Smith, he is to stand off and on in the harbor and examine every boat, in search of the Governor and his secretary. If found and made prisoners, they are to be delivered to the Council, if Captain Smith has orders to that effect; if not, they are to be brought on board the *Defence*. If they have escaped, he is to go to Colonel Fitzhugh's and assist Captain Smith in examining the house, if necessary. If Eden be not found there, Nicholson is to stand as far down the bay as seems prudent.

It will be observed that there is very little consideration paid to the Council of Safety in these instructions.<sup>3</sup> They were especially indignant at this, and most of all, at the direction to take the Governor to Baltimore. Purviance tried to explain this at a later day by saying that he "conceived that, at the seat of government," Eden "would have numerous friends and partizans, a clamour might be raised and a rescue attempted."

The vessel set sail with these instructions, and came to anchor off Annapolis<sup>4</sup> about 3 o'clock Tuesday morning, April 16. At daybreak Captain Smith went ashore, and found the Baltimore deputation, to which he was accredited. They told him the Council had enjoined the utmost secrecy upon them, and advised him not to show his orders to anyone else, "as it was their opinion they were in some degree improper." After breakfast they waited on Jenifer, and on

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<sup>1</sup> Maryland Archives I, p. 382.

<sup>2</sup> Maryland Archives I, p. 382. Purviance swore he did not see these until after the tender's return. Maryland Archives I, p. 380.

<sup>3</sup> Maryland Archives I, p. 379.

<sup>4</sup> Maryland Archives I, p. 390.

their return to the coffee house they told Smith that Jenifer approved of the coming of the vessel, and that at 10 A. M. they would meet the Council, who would give Smith further orders. About noon he was told that they desired him to remain with the boat, and about sunset he went on board again<sup>1</sup> and found that only one boat had attempted to leave the harbor, and she had been stopped. On Wednesday morning this boat put off again, and was stopped again; about noon the Governor's boat, getting under way, was brought to,<sup>2</sup> and, with a perspicacity equal to that of Sergeant Buzfuz, the Governor was thought to be preparing for an escape, because some bottles of porter and claret were found on board. Smith put a guard on the boat, and was sorry to find that they drank two bottles of porter and one of claret. Shortly afterwards the owner of the other boat which was stopped came to the tender to ask the cause for stopping his vessel. Captain Smith went ashore with him, and, meeting there Charles Carroll, Barrister, Secretary Smith and Lieutenant Nicholson, the owner of the boat, complained of his treatment to them, and was assured the Council had given no order for such conduct on the part of the tender. Smith then was given a note to his committee and told, verbally, that the affair was settled, and that he might return to Baltimore.<sup>3</sup> He accordingly weighed anchor about 2 o'clock, having given the instructions to Mr. Carroll. The boat reached Baltimore, and reported to the Committee of Observation that very evening.<sup>4</sup>

The affair was settled. At noon on Wednesday, April 17, the time he had promised,<sup>5</sup> Eden had sent a letter to Messrs. Carroll, Hall and Paca. This dignified and manly docu-

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<sup>1</sup> Maryland Archives I, p. 391.

<sup>2</sup> Eden said three persons in it were nearly drowned. American Archives IV, 4; 731.

<sup>3</sup> Maryland Archives I, p. 361. American Archives IV, 4; p. 392., 731, ff.

<sup>4</sup> Maryland Archives I, p. 360.

<sup>5</sup> Maryland Archives I, p. 337.

ment had fully satisfied every desire of the Council. He acknowledged their "polite behaviour" in their unwelcome errand, but refused, on "mature consideration," whilst acting "in any degree as Governor of this Province, to give my Parole to walk about in it as a Prisoner at Large." He stated that he must cease to be Governor, if he became a prisoner. However, he tells them willingly that: "I had and have no Intention, during these Times, of leaving the Province, whilst my continuing here can in my own Opinion, tend to preserve its tranquility." This resolution is not altered by the "indignity" now offered him; but "I shall persevere in my line of Duty, by what I think the Rule of Right," though he is somewhat chagrined at finding himself suspected unmeritedly. He challenges the Council to show any measures hostile to Maryland arising from his requests or information sent by him to England. Nay, he is willing to go further; not only does he intend to continue in his station "as long as permitted, or the ostensible Form of the established Government can contribute to preserve the Peace of the Province," but he goes on to state "that, as your Convention is to meet shortly, they shall find me here and willing to continue acting in the same Line I have hitherto done, so long as Maryland can reap any peaceful Benefits from my Service."<sup>1</sup>

He makes only one proviso to the above statement, and that is that he have assurances that his "peaceful departure shall not be impeded, whenever I find my remaining here unnecessary, or that my private affairs at home indispensably demand my Return."

The manly frankness of the letter appeals to us, as they then did to the Council,<sup>2</sup> and we feel they can give none but an affirmative answer to such an open statement of the

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<sup>1</sup> Maryland Archives I, p. 338. American Archives IV, 4, 963.

<sup>2</sup> Eddis (p. 280) writes, "the Council of Safety acted on this occasion (*i. e.*, the intercepted letters) with the utmost moderation and delicacy."



Governor's position. There was, however, the possibility that they might not do so, and, therefore, Eden closes his letter with a solemn word of warning: "Consistent with my honor and my insulted station, I cannot add more but that, if made a Prisoner, I shall consider myself treated as an Enemy, and such a Proceeding as a Breach of that Confidence I have implicitly imposed in you, which I thought my conduct and the public Declaration of the Convention justified." The Council immediately ordered an answer to be draughted.<sup>1</sup> Its tone is almost apologetic, and shows how assured of his honesty and truthfulness were those in the Province who knew Eden best. In reading their communication we constantly detect a feeling of shamefacedness, and are sure that they were asking his parole more to satisfy the more violent patriots of Baltimore than because they doubted him. They extend to him "ardent wishes for a speedy Reconciliation upon honorable and constitutional terms," though Bunker Hill had been fought ten months before. They acknowledge that they know of no information given, nor measures concerted by him, "injurious to this Province or America," and thank him for his resolution of continuing his station. They assure him that if he ever wishes to leave the province, every obstruction shall be removed, as far as their influence extends with the convention.

In regard to the mission of the committee to him, they hope "in Times of public Distress and Convulsion, when a free People are threatened with a deprivation of their civil Liberty, Exertions for its Preservation, influenced by the purest Principles and conducted with all possible Attention to Form and Ceremony, will not be considered as an Indignity or Insult to any Rank or Station in the Community."

Only "conjecture and apprehension of an injurious correspondence can be drawn from the intercepted letters," still the Council, entrusted with the public safety, thought they should pursue with vigilance all measures, "tho' the Dan-

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<sup>1</sup> Maryland Archives I, p. 338.

ger to be guarded against may rest only in possibility." Personally, they "sincerely lament the Necessity of the Times, which forced us to a Measure so disagreeable to us, and which may prove an unmerited Treatment" of Eden; for they well remember "the friendly Disposition you have often manifested and the several favorable and impartial Representations you have made to Administration, of the Temper and Principles of the People of this Province."

Having sent this letter, as creditable to the good sense and calm judgment of the Council, as Eden's was to him, they write to the Maryland Delegates in Congress, telling the whole story and complaining of the "Indignity offered our Board by the Committee of Safety in Virginia and the Want of Confidence in the Baltimore Committee, to say Nothing more harsh." They "know of no good cause for this Insult, in passing us by, nor can they conceive what Motives could induce such Treatment."<sup>1</sup>

The next morning, Thursday, April 18, Lieutenant Plunket returned from Philadelphia, and brought the Baltimore Committee a letter from John Hancock,<sup>2</sup> dated April 16, stating that Congress had resolved that the person and papers of Governor Eden and of Alexander Ross be immediately seized and that they are to preserve secrecy as to the resolutions concerning Eden until executed by the Council of Safety. A copy of this letter was at once sent<sup>3</sup> to the Virginia Committee of Safety, with a very brief statement of what had been done and the assurance that the Council would probably execute the resolve of Congress as soon as it was received.

The Baltimore Committee also forwarded a letter<sup>4</sup> from Congress to the Council of Safety; but that body received it in no amiable mood. In addition to its previous causes of grievance, the instructions given by Purviance to Smith

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<sup>1</sup> Maryland Archives I, p. 341. American Archives IV, 5; 1561.

<sup>2</sup> Maryland Archives I, p. 361. Purviance, p. 192.

<sup>3</sup> Purviance, p. 193.

<sup>4</sup> Maryland Archives I, p. 361. American Archives IV, 5; 954.

had been received by the Council. They were indignant at the assumption of power therein contained, and now to be directed by Congress to take certain measures, two days after their own judgment had caused them to take other ones, was hard indeed to endure.

They wrote to their delegates:<sup>1</sup> "We consider the Congress as having the supreme Authority over the Continent, and look up to them with Reverence and Esteem; but that they cannot interfere with uncontrollable Power in internal Polity of this or any other Province." They considered the resolves such an interference, and drafted a letter to Hancock,<sup>2</sup> which "gave high offence to some of the very hot Gentlemen" in Congress, and upon which the Maryland Delegates expected a censure would be passed, though none actually came.<sup>3</sup>

The letter is stiff and uncompromising in tone, the feeling of State rights is to be read between the lines all through it; but for all that it is calm, deliberate and courteous. The truth was that Maryland was in the right, and she knew it. The Council informs Mr. Hancock:<sup>4</sup> "We were furnished with the intercepted letters some Time before the Receipt of yours, and had taken such measures as in our Judgment were competent to the Occasion. To dissolve the Government and subvert the Constitution, by the Seisure and Imprisonment of the Governor, we conceived to be a Measure of too much Delicacy and Magnitude to be adopted," without the advice of the convention. If the Governor would give them, as he had done, assurance that he would not leave before convention met, they saw no necessity urging them to immediate "anarchy and confusion." Under these circumstances, they cannot comply with the request of Congress, and they assure Hancock that they "are determined to maintain the Rights and Liberties of this Country at every

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<sup>1</sup> Maryland Archives I, p. 355. American Archives IV, 5; 983.

<sup>2</sup> Maryland Archives I, p. 372.

<sup>3</sup> Maryland Archives I, p. 386.

<sup>4</sup> Maryland Archives I, p. 350.

Hazard of life and Property, and will vigorously procure every Measure which the defence of America shall require." They had proved the truth of this, for the arrest of Ross had been ordered on the preceding Monday, and had already been made.<sup>1</sup>

On Friday, April 19, the Council addressed a long letter to their delegates,<sup>2</sup> telling what had happened up to that date, and complaining bitterly of the treatment they have received from Virginia, Baltimore, and the Continental Congress. They are at a loss to know the cause of such treatment; they have cheerfully co-operated with and assisted the colony of Virginia, and have "considered the Interest and Security of Baltimore as essential to this Province." If Congress, which they feel would have acted differently had it possessed the same evidence as they, disapprove of the line of conduct they have adopted,<sup>3</sup> they intend "to call a Convention with all convenient Speed," and lay the whole matter before them. As to this point, they ask the advice of the delegates, being firmly persuaded, even at that late day, "that, if this Storm blows over, we shall continue to enjoy quiet sometime longer, if not the whole Campaign, and perhaps before another, all will be settled happily." They felt that part of the immunity of Maryland from the attacks which had been made upon Virginia was due to the representations made by Eden of their moderation, and they were impressed by the idea, so clearly seen in their letter to Hancock, that, while they preserved the form of the old government, even though all power had been taken from it, they had not broken with the old order of things. "If on suspicion only," they write, "we seize the Head of the Civil Government, all Commissions of Magistrates, Sheriffs and other Offices flowing from him must be at an end, and the Council of Safety have no power to fill the Vacancy—the convention have this power inherent in them, as Representatives of the

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<sup>1</sup> Maryland Archives I, pp. 332, 352.

<sup>2</sup> Maryland Archives I, p. 354.

<sup>3</sup> Maryland Archives I, p. 355.



People, they have not communicated it to us, that we can find." They have not yet realized that a new government has already been established or that a new regime has been inaugurated; but, clinging to the past, and blinded to the fact that that past was rapidly receding from them, they cry out: "If the Governor is treated with ignominy and Rigour and laid under Arrest and guarded, &c., we cannot tell what will be the Consequences; this we are certain of, our Government will be shaken to its very Foundations, and in what Form it would be settled again, we know not." Does it seem that they were extraordinarily blind and unable to read the signs of the times? There were no keener men in that day. Rather is it a proof of the masterful tact of Eden, who yielded so gracefully that he seemed not to yield at all, who appeared to hold the reins of government still, although the spirited steeds had long been beyond his control.

That afternoon or the next morning came two letters<sup>1</sup> from the delegates at Philadelphia, telling of the proceedings there. When Hancock's letter reached Annapolis, one of the Council waited on Eden and told him that the Council thought Virginia and Baltimore were at the bottom of it; that they were satisfied with what he had said, and would not comply with the resolves.

The Council, now determined to vindicate its conduct, directed Mr. George Lux,<sup>2</sup> the clerk of the Baltimore Committee, to appear on Monday, the 22d of April, with all his papers, and the chairman of that committee, Mr. Samuel Purviance, and the deputy chairman, Mr. William Lux, to appear for examination at the same time.<sup>3</sup>

That same morning<sup>4</sup> Eden did one of the most thoughtful and disinterested things recorded of him. Having heard, as doubtless all Annapolis did, of the resolutions of Con-

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<sup>1</sup> Maryland Archives I, pp. 347, 351.

<sup>2</sup> Maryland Archives I, p. 357.

<sup>3</sup> American Archives IV, 6; 731.

<sup>4</sup> Maryland Archives I, p. 357.



gress, and wishing to make the best return he could for the confidence reposed in him, he sent for Messrs. Charles Carroll, Barrister, John Hall, James Tilghman and William Paca, and voluntarily gave them his parole not to leave Maryland until the convention should meet. This parole, which he would have given on no "Requisition, however respectful, or your Representation of probably a more disagreeable Proceeding," he now gave, "as your Conduct towards me justly merits it, \* \* \* that your personal Safety and future Respect from your Constituents" might be preserved. It was an act of rare magnanimity, and helps to show us why Eden was popular.

That same day was the beginning of evils for Purviance. He had hoped for glory and a reputation as an active zealous patriot, from his measures for the seizure of Eden. Instead, he received therefrom little but trouble and vexation, and probably was made heartily sick of his attempts to wield unauthorized executive power. On this day the Baltimore Committee met and asked Captain Smith to furnish them with his instructions.<sup>1</sup> When they had read them they enquired of each other if any of them had concurred in the instructions, and each denied it. They then sent to Purviance, and asked him on what authority he had given these instructions. He acknowledged that he alone was responsible for them, and promised to give a written statement on Monday morning. On that day, April 22, he presented his written statement<sup>2</sup> concerning the instructions, and expressed therein the hope that "the extreme Importance of the Occasion will at least palliate my offence in taking (what may be deemed by some) a very rash step, but which, I hope, the Necessity of the Case will justify me in to you and the Publick." The committee was probably a little touched in dignity because Purviance had taken this responsibility upon himself, and they saw clearly that those instructions, at any rate, were such as *they* had no power to give. So

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<sup>1</sup> Maryland Archives I, p. 362.

<sup>2</sup> American Archives IV, 5; 1520. Maryland Archives I, p. 364.

they "highly disapproved"<sup>1</sup> of the conduct of the chairman, both because he had presumed to act "without their Concurrence and approbation," and, especially, because he acted in regard to matters "that so evidently do not come within their Jurisdiction." For this reason, also, they disavow and disapprove of the instructions to Captain Smith; but they trust "this well-meant Excess in so interesting a Crisis will find a more easy Pardon" than "a criminal neglect" or "a Timidity still more dangerous and blameable." This they say, being fully persuaded that Purviance was actuated by "uniform, warm and zealous Attachment to our distressed and perhaps betrayed country."

The citations before the Council were next taken up,<sup>2</sup> and the committee thought it expedient that they be obeyed, though they believe that "the Powers vested in the Council of Safety do not justify summoning a Member of the Committee" unless he has been guilty of trying to "disunite the People of this Province in their present Opposition, or to destroy the Liberties of America." Wm. Lux had already written<sup>3</sup> the Council that they could not well attend until Tuesday, April 23. When they did not then appear, the Council ordered their arrest.<sup>4</sup>

On that Monday, April 22, the Council wrote another long letter to the Maryland delegates. They inform them that, considering "the Authority of the whole Province trampled upon and insulted (if not conspired against) and finding the delegates think the same," they have called the convention to meet on May 7, that their conduct may be endorsed by it. They feel that they have pursued the correct course, and are convinced, from "his Declarations and Answers, and from his manner of behaving to us," that Eden will not leave.<sup>5</sup> "Little Minds might have been gratified with ac-

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<sup>1</sup> Maryland Archives I, p. 365.

<sup>2</sup> Maryland Archives I, pp. 365, 366.

<sup>3</sup> Maryland Archives I, p. 366.

<sup>4</sup> Maryland Archives I, p. 372.

<sup>5</sup> Maryland Archives I, p. 369. American Archives IV, 4; 1010.

tual Imprisonment and further Severities," but they know that "we have all the Advantages we could have had, if we had committed him to the public Gaol, and we are persuaded many more." With Eden's permission they have examined his bureau and closet, and found several letters from him to England, in which he speaks favorably of Maryland. He has assured them that he has received no letters from the ministry but those they have seen. They have a consciousness of duty performed, but their characters have been blackened and insulted, and a copy of an anonymous letter traducing them has been refused them by Congress. Their deputies in Philadelphia have received a "grating insult" from Mr. Hancock in not admitting them to his presence, their "Province is the Object of Attention," and they fear they are to be plunged into all the Horrors of Anarchy, only to gratify a few individuals out of Congress. However, they are not disheartened, but will "still persevere in doing our Duty, with unremitting zeal, and will not fail to assist our Neighbours, if necessary."

On the morning of Wednesday, April 24, George Lux sent a letter,<sup>1</sup> stating he was ill, but had sent the papers requested, which were delivered to the Council of Safety by William Lux. Mr. Purviance was called up in the afternoon, told of the charges against him in regard to his conduct concerning the intercepted letters, and examined at some length.<sup>2</sup> The Council, on the morrow, wrote to the Deputies, that "he prevaricated most abominably,"<sup>3</sup> and his examination undoubtedly shows a lack of frankness.

As a result of his examination, Capt. James Nicholson, Maj. Mordecai Gist and Capt. Samuel Smith were summoned to appear on the following day. This they did, and were cautioned,<sup>5</sup> after examination, to be more on their

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<sup>1</sup> Maryland Archives I, p. 373.

<sup>2</sup> American Archives IV, 5; 1060. Maryland Archives I, p. 375.

<sup>3</sup> Maryland Archives I, p. 385.

<sup>4</sup> Maryland Archives I, p. 375.

<sup>5</sup> Maryland Archives I, pp. 386 to 392.

guard for the future and not to second the attempts of any one exceeding his power.

Purviance did not get off so easily. "Considering his Conduct and the high and dangerous Offence of assuming the supreme executive Power"<sup>1</sup> in Maryland, he is bound by a recognizance to the sum or £500 to appear before the convention. Here matters rested for the present. The Maryland Council had acted in a wise, dignified and moderate manner. They were actuated by the same spirit as Stone, who wrote Jenifer:<sup>2</sup> "I wish to conduct affairs so that a just and honorable reconciliation should take place, or that we should be pretty unanimous in a resolution to fight it out for Independence; the proper way to effect this is not to move too quick, but then we must take care to do everything which is necessary for our Security and Defence, not suffer ourselves to be lulled or wheedled by any deceptions, declarations or givings out. You know my hearty wishes for Peace upon terms of Security and Justice to America. But war, anything, is preferable to a surrender of our rights."

Purviance was not, however, without many friends.<sup>3</sup> Richard Henry Lee wrote him from Philadelphia: "If zeal in a good cause may not cover small irregularities or deviations from the strict line of office and regard for the public safety be chained to the letter of business, I fear such pedantic politics will ruin America." He gave him advice as to his conduct before the convention.<sup>4</sup> In Philadelphia, whither Jenifer had gone to look after affairs, Lee, with the "impudence and assurance of the devil," as Jenifer excitedly wrote to Carroll,<sup>5</sup> justified Purviance, denied that General Lee had directed the Governor to be seized and brought his brother Frank to confirm his statement. Jenifer, however, stood

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<sup>1</sup> Maryland Archives I, p. 388.

<sup>2</sup> Maryland Archives I, p. 383. American Archives IV, 4; 1047.

<sup>3</sup> Purviance, pp. 194, 195, May 1, 1776. On May 28, R. H. Lee wrote to General Lee (Lee Papers II, 46), asking, "Is the Convention of Maryland a Conclave of Popes, a mutilated Legislature, or an assembly of wise men?"

<sup>4</sup> Purviance, p. 196.

<sup>5</sup> American Archives IV, 5; 1146.



his ground, and "almost brought Lee to shame," while Col. Benjamin Harrison became so convinced of the justice of Maryland's cause that he wrote to the Virginia Committee of Safety "that they must apologize to the Council for the insult." In general, Jenifer found the Council "highly applauded" in Philadelphia for their "spirited conduct."

Gen. Charles Lee found criticism was being directed against him,<sup>1</sup> and wrote to Washington that the Marylanders "make a most damnable clamor" about his conduct, which was "not only justifiable in the eyes of God and man, but absolutely necessary."<sup>2</sup> He also wrote<sup>3</sup> to Hancock, justifying his course. Another letter<sup>4</sup> of his to Jenifer is somewhat apologetic in tone. He thinks, "when the circumstances are explained, that the censure will appear unjust, and that I was neither violent, assuming, nor precipitate." He thought, by seizing the Governor and his person, "the whole machinations of the ministry might be discovered." This must be done "with secrecy and expedition," and, as Lee imagined there were "no troops at Annapolis to execute the purpose," but knew there were soldiers at Baltimore, he addressed his letter there and to Mr. Purviance, inasmuch as there were no Continental officers in the vicinity. So far we feel his defence is weak, nor is the remainder stronger.

In regard to the charge that his intrusion into the affairs of Maryland was assuming and arrogant, because the State lay outside of his command, he states he "did not presume authoritatively to order, but as one servant of the publick, earnestly to entreat and conjure another servant, who alone appeared to have power to execute the plan." He rather sneeringly adds, that if councils must be held, before traitors

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<sup>1</sup> John Page wrote Lee a short account of the matter on April 28 (Lee Papers I, 457).

<sup>2</sup> He tries to divide the responsibility with the Virginia Committee of Safety. Letters dated May 10, Lee Papers II, 19. American Archives IV, VI, 406.

<sup>3</sup> Dated May 7. American Archives IV, 5; 1220.

<sup>4</sup> Dated May 6. Maryland Archives I, 410. American Archives IV, 5; 1222. Lee Papers I, 472.



be seized, he fears every traitor will escape, and concludes, with the assurance that what he did was done "in the character of a common, zealous member of the community, not of an officer."<sup>1</sup>

## CHAPTER XIV.

### THE END OF THE PROPRIETARY GOVERNMENT.

There was now a lull in the political storm until the convention met<sup>2</sup> on May 7, 1776. Two days later the proceedings of the Council were laid before it, and the next day a committee of three<sup>3</sup> was appointed to examine these. They reported that Purviance "hath usurped a power to direct the operations of the military force of this province;" that his letter to Captain Smith, in the name of the Committee of Observation, but without their knowledge, was a wrongful assumption of authority, and that his letter to Hancock "hath unjustly represented the convention and Council of Safety as irresolute and afraid to execute the trusts reposed in them, and endeavored to draw a suspicion upon them of a want of spirit and zeal in the execution of their duty."

On May 18 Purviance was heard<sup>4</sup> in his own behalf, and the report of the committee was adopted. Four days later he was called before the convention<sup>5</sup> and told that they "highly disapprove and condemn his conduct, in which they think he was considerably influenced by General Lee, a person having no interest nor property in Maryland, and, therefore, one whose interference in the domestic affairs of the Province is dangerous." After this ebullition of States Rights

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<sup>1</sup> Jenifer, in an important letter of July 17 (Lee Papers II, 141), resumed friendly relations with Lee, accepting his apologies and laying most of the blame on Purviance, whose meddlesomeness was, of course, more outrageous.

<sup>2</sup> American Archives IV, 5; 1579, ff.

<sup>3</sup> Jas. Hollyday, Robert Goldsborough and Thomas Johnson, Jr.

<sup>4</sup> American Archives IV, 5; 1586.

<sup>5</sup> American Archives IV, 5; 1590.

feeling, the resolves go on to state that while they intend to prevent no one from examining the conduct of the Government, nor from communicating his opinions, yet they cannot suffer themselves to "be wantonly and licenciously traduced." Purviance's letter could have done no good, if true, for Congress could not have removed the Council; but being false, might have "proved highly prejudicial." Yet, inasmuch as he has shown "active zeal in the common cause," and in the hope of his future conduct being more respectful and "more attentive to propriety," a censure and reprimand by the President from the chair is the only punishment inflicted on him. Eden and many others thought this very trifling punishment,<sup>1</sup> but it was probably as much as it was wise to inflict.

The day previous to this the convention had passed highly important resolutions in answer to the recommendation of Congress that the colonies adopt a form of government. Congress, in the preamble to these resolutions, stated that it was "now necessary that the exercise of every kind of authority under the said Crown should be totally suppressed and all the powers of government exerted under the authority of the people."<sup>2</sup> The Maryland Convention flatly denies this *ipsissimis verbis*.

They are very sore over the conduct of Congress in the matter of the intercepted letters; they are naturally conservative; they are still anxious to preserve the "ostensible form of government." They resent outside interference in their affairs, and resolve<sup>3</sup> that "the people of this province have the sole and exclusive right of regulating the internal government and police of this province." They are anxious to aid the common cause, and are willing "to enter into further compact with the other colonies for the preservation of the constitutional rights of America," but they are still, on this 21st of May, 1776, firmly persuaded that a "reunion with

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<sup>1</sup> American Archives IV, 6; 736. <sup>2</sup> Convention Proceedings, p. 139.

<sup>3</sup> Convention Proceedings, p. 141.

Great Britain on constitutional principles would most effectually secure the rights and liberties and increase the strength and promote the happiness of the whole empire.” Consequently, they repeat to their deputies in Philadelphia the instructions formerly given them.

Eddis saw the trend of events more clearly than the convention, and wrote that, “however favorably they may be now disposed, they will not long be able to stem the torrent which in several provinces runs strongly toward independence.”<sup>2</sup>

The convention next take up Governor Eden’s letters,<sup>3</sup> and, after consideration, endorse the conduct of the Council. They do not find that Eden’s “correspondence has been with an unfriendly intent, or calculated to countenance any hostile measures;” but they foresee future difficulties from the commands to Eden to “give facility and assistance,” in every way, to the armament which Great Britain is to send. “If he remains in the exercise of the powers of Government, he must obey these instructions or hazard the displeasure of the King, which it cannot be expected he will do.” If he go, however, and leave the President of the Council, Richard Lee, in charge of affairs, this difficulty will be avoided and the established form of government preserved, as the convention wish it to be. Consequently, it is to be “signified to the Governor that the Publick quiet and safety \* \* require that he leave the Province, and that he is at full liberty to depart peaceably with all his effects.” All of these resolutions passed unanimously but the one concerning Eden’s departure, on which the vote stood twelve counties to four.<sup>4</sup> A committee of five was now appointed to present

<sup>1</sup> Lee Papers II, 46. R. H. Lee writes bitterly of this to General Charles Lee, and attributes it to “Proprietary machinations.”

<sup>2</sup> Letters, p. 283.

<sup>3</sup> May 24. American Archives IV, 5; 1594.

<sup>4</sup> St. Mary’s, 4 aye; Charles, 3 aye, 1 no; Calvert, 3 aye; Prince George’s, 3 aye; Anne Arundel, 3 aye; Frederick, 3 aye; Baltimore, 3 aye; Harford, 3 aye; Cecil, 3 aye, 1 no; Queen Anne’s, 3 aye,

these resolutions to the Governor, and with them an address, stating that the convention "entertains a favorable sense" of his conduct relative to American affairs, and "wishes for your return to resume the government of this province, whenever we shall happily be restored to peace and that connexion with Great Britain, the interruption and suspension of which have filled the mind of every good man with the deepest regret." Because of his endeavors "to promote the real interests of both countries," they trust that, on his return to England, he "will represent the temper and principles of the people of Maryland, with the same candor as" formerly, and will exert his efforts "to promote a reconciliation upon terms that may be secure and honorable" to both parties.<sup>1</sup> This is truly extraordinary language when we think that independence is only six weeks off. It shows the conservatism of the people and their love for their Governor.

But what followed is still more remarkable. The committee which waited on Eden not only delivered the address and resolution, but made a verbal proposal to him, in doing which they were doubtless sure of having their action indorsed by the convention, if necessary. They told him<sup>2</sup> that the convention intended "to preserve, as far as may be, the ostensible form of government, in hopes it may have some influence towards a reunion" with Great Britain. If commissioners from the latter come shortly, either "re-establishment of the old government or a total separation" will soon occur. The convention has "no doubt or suspicion" of the Governor's inclination, and request that he promise to take no "active hostile part, nor to correspond, directly or indirectly, with administration, or those who may

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2 no ; Somerset, 2 aye, 1 no ; Worcester, 2 aye, 1 no ; Kent, 4 no ; Dorchester, 4 no ; Talbot, 3 no ; Caroline, 1 aye, 2 no. Each county had four delegates.

<sup>1</sup> Proceedings of Convention, p. 152.

<sup>2</sup> American Archives IV, 6 ; 737.

be carrying on hostilities in America, until the result of the commissioner's embassy be known. If Eden "thinks himself at liberty to enter into such engagement, it is much the inclination of the convention that he should continue in the province in his station." This astonishing proposition, showing how full the confidence of the people was in the Governor, could not be accepted by him, as he thought it inconsistent with his duty to England. He therefore agreed to leave Maryland, as soon as an opportunity should offer. Eden further told the committee that, disagreeable as he found his situation to be, he should "still continue most sincerely to wish for the welfare and prosperity of Maryland, and, consequently, for a reconciliation with and constitutional dependency on Great Britain."<sup>1</sup>

The convention adjourned as soon as this matter had been disposed of, not expecting to meet again until August. On May 26 the Governor's boat, the *Friendship*, with Secretary Smith on board, went down the bay to see about getting a vessel for England. Eden wrote to Carroll,<sup>2</sup> suggesting precautions to avoid hostilities on that trip, and stating that he was "desirous to leave the province on the most friendly terms, and in as much peace as the times will admit." The *Friendship* reached the British fleet<sup>3</sup> on the 29th, and on the next day Secretary Smith received a letter for Eden, stating a ship will be sent to receive him, until passage can be obtained for England, and orders will be given to the ship to commit no hostilities.<sup>4</sup>

Commodore Hammond, the writer of the letter, greatly regrets Eden's departure, but is not surprised at it. It is true that "the Province of Maryland has hitherto been looked upon as having acted with a degree of moderation in the present unnatural Rebellion," and Hammond "had some expectation" that Eden "might have been able to convince the

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<sup>1</sup> Passports were prepared for Eden on May 25.

<sup>2</sup> American Archives IV, 6; 738.

<sup>3</sup> Maryland Archives I, p. 453, American Archives IV, 6; 612.

<sup>4</sup> American Archives IV, 6; 617; Maryland Archives I, 459.



people of the impossibility of their succeeding;" but since he had "certainly now given this a very fair trial, and it is become apparent that the matter can only be settled by force of arms," nothing would be gained by a longer stay, and Eden would only be exposing himself to insults.

This letter was brought to Annapolis on May 31 and shown by Eden to the Council,<sup>1</sup> who sent a circular to the militia officers not to be alarmed at the sight of vessels, nor to attempt to attack them. They have "the strongest assurances that the Governor will leave the province with the most friendly regard for its inhabitants, and will do everything in his power that may contribute towards promoting a reconciliation between the Mother country and her colonies." So they write on the 3d of June, but long ere Eden reached England they had declared Maryland independent. On June 7 the Governor called his Council<sup>2</sup> together and gave them a narration of events. On June 12 they again met for the last time. They then ordered that writs for a new Legislature be issued, and decided not to close the Land Office,<sup>3</sup> as was desired by the guardian of the Lord Proprietary, until certain litigation be concluded. Then they adjourned forever, and the Upper House of the Colonial Legislature passed away.

On the next day the Governor issued the writs for a new Assembly to meet on July 25. It was his last official act, and on the 25th of June the convention resolved that the writs be not obeyed,<sup>4</sup> and no election be held. The action of the convention in regard to Eden had not given universal satisfaction. The Upper District of Frederick County on June 29 condemned the "adulatory address."<sup>5</sup> "An Ameri-

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<sup>1</sup> Maryland Archives I, p. 458. American Archives IV, 6; 682.

<sup>2</sup> Benedict Calvert, Dan'l Dulany, John Ridout, Daniel of St. Thos. Jenifer, Wm. Hayward, P. Thos. Lee, Benj. Ogle.

<sup>3</sup> American Archives, IV, VI, 740. It was not closed for nearly a year.

<sup>4</sup> American Archives IV, 6; 821.

<sup>5</sup> American Archives IV, 6; 1047.

<sup>6</sup> American Archives IV, 6; 1130.

can" issued an address to the people, stating<sup>1</sup> that "the transactions of the convention relative to Governor Eden have given great disgust in this and our sister colonies." But the Virginia Convention was the most prominent complainant.

On May 31 they passed resolutions<sup>2</sup> which tended still more to irritate the States Rights feelings of Maryland. These resolutions condemn those passed by the Maryland Convention, complain of the reasons assigned for suffering Eden to go as insufficient, cry out that Maryland has permitted Eden's "passage to promote our destruction," and that, by the address, Eden may assume in Great Britain "the character of a public agent, and, by promoting division and disunion among the colonies, produce consequences the most fatal to the American cause." The Virginians little knew the temper of Eden and of the Marylanders,<sup>3</sup> and their last sentences were justly offensive: "We cannot avoid imputing these proceedings to some undue influence of Governor Eden under the mask of friendship to America and of the Proprietary interest in Maryland, whereby the members of that convention were betrayed into a vote of fatal tendency to the common cause, and, we fear, to this country in particular, and feel it an indispensable duty to warn the good people of that province against Proprietary influence." These resolutions, we are told by Eddis,<sup>4</sup> operated "with great force on the minds of the multitude, and there are some who publicly avow their opinion that the community at large are not bound to yield their assent to any proceedings of delegates which may be prejudicial to the general interests." It was even feared that some violent measures might be taken to detain the Governor, an association in Baltimore,

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<sup>1</sup> American Archives IV, 6; 1096.

<sup>2</sup> American Archives IV, 6; 629.

<sup>3</sup> Gen. Chas. Lee, on June 29, wrote to Benjamin Rush (Lee Papers II, 96). "What poor mortals are these Maryland Councilmen! I hope the Congress will write a letter to the People of that Province at large, advising 'em to get rid of their damn'd Government. Their aim is to continue feudal Lords to a Tyrant."

<sup>4</sup> Letters, p. 291.

known as the Whig Club, loudly proclaiming the absolute necessity of seizing him as a pledge for the public safety.<sup>1</sup>

Eden, though rather anxious for the arrival of a ship,<sup>2</sup> conducted himself "with the utmost coolness and fortitude," and to all appearances completely relied on the assurances of the convention.

The Council was extremely indignant.<sup>3</sup> They wrote to the deputies in Philadelphia that they feared interruption to the Governor's passage from Virginia, whose "intention is to stir up the people against the powers now in being." They speak of the matter with considerable bitterness, and state that they, after returning a short answer,<sup>4</sup> intend to leave the matter to the convention.

Going ahead of our story in point of time, we find that on July 6 the convention resolved<sup>5</sup> that the Virginia resolutions were hasty and betray a disposition to interfere, which might have proved highly injurious by infusing groundless jealousies. This convention has never meddled with Virginia, was the only judge of the propriety of her conduct, and possessed evidence which Virginia did not have. They state that they presented the address to Governor Eden, as a testimony due to "his fair and impartial representations of the principles, motives and views of the people of this Colony," and that they must vindicate themselves from the attempt of Virginia to appeal to the people of Maryland against the convention and to hurt Maryland in the good opinion of the United Colonies.

The convention reassembled at the call of the Council on June 21, 1776. A great change had come over popular sen-

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<sup>1</sup> Eddis Letters, p. 303.

<sup>2</sup> Eddis Letters, p. 307.

<sup>3</sup> Maryland Archives I, 470.

<sup>4</sup> In Maryland Archives I, 483, ff., is found printed a long letter from Chas. Carroll, Barrister, to Wm. Hayward, giving his view as to what the answer to Virginia should be.

<sup>5</sup> American Archives IV, 6; 1505.

timent<sup>1</sup> since last they met, and Maryland was now nearly ready for independence.

On the evening of the next day His Majesty's ship, *Fowey*, Capt. George Montagu, arrived at Annapolis<sup>2</sup> to carry away the last Proprietary Governor of Maryland. All felt the times were dangerous and unsettled, and as Eddis tells us,<sup>3</sup> "the warmest attachments" were "obliterated by the malignant influence of political contention." The Governor still appeared "easy and collected," and was "treated with every exterior mark of attention." Eddis felt certain that "the consistency and propriety of his conduct in many trying and peculiar situations will be long remembered with sentiments of esteem and gratitude," but was very anxious to see the Governor safely embarked and out of danger of a possible imprisonment.

On the 23d Montagu notified<sup>4</sup> Eden that he had arrived under a flag of truce, and was ready to take him off. Eden at once boarded the ship, leaving his baggage until morning. The Council of Safety, rejecting the advice of the more headstrong patriots to detain Eden, took an affectionate leave of him, after which he was conducted to the barge with every mark of respect. His last act before embarking was to urge Eddis to remain at his post in the Loan Office till superseded by some permanent authority.<sup>5</sup>

Unluckily, seven white servants and a deserter from one of the militia companies found means to escape that night, and were received on board the *Fowey*.<sup>6</sup> They were soon discovered, and the next morning a letter was addressed to

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<sup>1</sup> According to tradition, largely due to Chase's efforts.

<sup>2</sup> Maryland Archives I, pp. 510 and 511. American Archives IV, 6; 1034.

<sup>3</sup> Letters from Am., pp. 310, 311, June 11, Samuel Smith sent letters from prisoners to England to Eden to have them taken by him. American Archives IV, 6; 806. Maryland Archives, I, 477.

<sup>4</sup> Maryland Archives I, 510, 511. American Archives IV, 6; 821.

<sup>5</sup> Eddis, p. 313.

<sup>6</sup> Maryland Archives I, 514.

Captain Montagu by the Council of Safety,<sup>1</sup> requesting that the runaways be returned, and that any who might escape in the future be not received. They also wrote to Eden,<sup>2</sup> asking him to use his good offices with Montagu to have the fugitives returned, and promising, in that case, as they had promised Montagu, to observe the truce. A British ship might well have kept the deserter from a possible vengeance, but it is difficult to see on what justifiable ground a request could be refused for the return of runaway servants. It was refused, however, for Montagu wrote<sup>3</sup> that his orders were "peremptory to receive all persons well affected and give them every protection." He would not send back the servants to a "severe and ignominious servitude." Eden's influence was so little that he was forced to answer the Council "that every exertion of my interest or interposition on this subject must prove ineffectual against the King's orders." He hopes they will not detain his baggage, and expresses a wish of "peace and prosperity to the province on constitutional principles."<sup>4</sup>

The Council was not at all satisfied with Montagu's answer, and sent word at once to the various officers that he had broken the truce.<sup>5</sup> The Convention, on the same day, passed resolutions that the correspondence between the Council and Montagu be published, that the truce was to be considered as broken, and that intercourse with the *Fowey* should cease at once.<sup>6</sup>

The next day Montagu sent<sup>7</sup> to know why the Governor's baggage was not sent on board, and told the Council that, if it were detained the truce would be broken. To this Jenifer

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<sup>1</sup> Maryland Archives I, 513.

<sup>2</sup> Maryland Archives I, 513.

<sup>3</sup> Maryland Archives I, 515. He said he would not receive runaway slaves.

<sup>4</sup> Maryland Archives I, 514.

<sup>5</sup> Maryland Archives I, 513.

<sup>6</sup> American Archives IV, 6; 1044.

<sup>7</sup> Maryland Archives I, 518. American Archives IV, 6; 1489, 1115.



answered that the truce was already broken by Montagu's action, and therefore the baggage was detained.<sup>1</sup> The Council of Safety ordered that the provincial arms and accoutrements be delivered to Colonel Smallwood and troops be disposed in fit places on the shores of the bay to repel any landing the *Fowey* might intend.<sup>2</sup>

The people were extremely irritated at this incident, and the royalists thought it had much to do with weakening the conservative force that had "hitherto restrained the impetuosity of the popular zeal."<sup>3</sup> Montagu thought it useless to wait longer for the delivery of Eden's baggage, and so "broke ground" on the morning of June 26 and took away the last Provincial Governor of Maryland. On the way down the bay some gentlemen from Oxford took on board the *Fowey* "several head of sheep and hogs; some as a present to the Governor, and others for sale."<sup>4</sup> It was a parting token of respect, not without risk to the givers, who were arrested therefor and made to appear before the convention. This body, however, discharged them, as they showed clearly that they did not know the truce had been broken when they went on board the *Fowey*.<sup>5</sup> It was most unfortunate that Eden's departure should have left bitter feelings in the hearts of so many<sup>6</sup> especially since it was from no fault on his part.

On July 17, Jenifer, in a letter to Charles Lee,<sup>7</sup> states "that the people of Maryland, though the last on the Continent to declare independence, will go as far as any colony towards the general defence of the United States. Peace

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<sup>1</sup> Robt. Smith, Maryland Archives I, 516.

<sup>2</sup> Maryland Archives I, 517.

<sup>3</sup> Eddis, p. 316.

<sup>4</sup> Maryland Archives I, 529. American Archives IV, VI, 1091.

<sup>5</sup> American Archives IV, 6; 1495.

<sup>6</sup> Jenifer, on July 17 (Lee Papers II, 141), wrote to Gen. Charles Lee: "Governor Eden's behaviour after he went on board the *Fowey* justified, in a great degree, your sentiment of his being seized."

<sup>7</sup> Lee Papers II, 142.

would have been their choice, but as that could not be had consistent with their safety, they will risque everything before they will submit." It is two weeks since the Declaration of Independence, and yet Jenifer, one of the leaders of the new State, goes on to say: "I am still of opinion that it is our Interest to be united with Britain, and that our Province instructed its Delegates to agree to unite with the other bodys in declaring independence too soon. \* \* It is better that the people at large should be before their Rulers, than their Rulers to be before them." It was such sentiments as this that enabled even one so popular as Eden to keep his position so long.

Eden believed in Maryland's loyalty until the end, and wrote his brother William, on July 1, that he left "a Province personally much attached to him and loyally disposed to his Majesty's Government, but unable to protect either their Governor or themselves from their own armed factions or from their Rebellious neighbours." He left no vestige of Proprietary Government, save Eddis and Clapham in the Loan Office, and the officials in the Land Office.

The Land Office, concerning which so much controversy had arisen during Eden's administration, was presided over by two judges, Benedict Calvert and George Steuart. Whether it were a public or private office was by no means easy to decide. The learned Kilty, writing thirty years later, says that "the very nature of the Land Office in Maryland has been as equivocal as its rules have been obscure."<sup>1</sup> As a proof of this, he points to the fact that the Proprietary officials therein continued to exercise their functions until May 15, 1777. Warrants and patents under the authority of Henry Harford, Lord Proprietary of Maryland, were issued up to that time, and Kilty well says<sup>2</sup> that "nothing proves the singular and disputable character of this establishment more than that patents should have continued to

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<sup>1</sup> Land Holders' Assistant, p. 257.

<sup>2</sup> Land Holders' Assistant, p. 279.

issue therefrom, signed by the President of the Proprietary's Council, with the addition of commander-in-chief in and over the *province* of Maryland; for nine or ten months after the name and *subordinate* nature of a province had been solemnly renounced in the Declaration of American Independence, and even after there were actually a Governor and Council elected, qualified and acting under the State Constitution." We may add, nothing shows more clearly the moderation of the colonists nor the conservative character of the Revolution in Maryland.

## CHAPTER XV.

### LATER YEARS.

Eden could not get transportation to England at once. He was compelled to learn that Maryland had declared herself independent, while he was still on Lord Dunmore's fleet. He was on the *Levant*, a store ship, on July 10, having left the *Fowey*, and was reported to have nothing to do with the management of the fleet.<sup>1</sup>

He was still in the Chesapeake as late as the end of July, nor do we know when he sailed thence. His last act of which we have record, before leaving America, was to use his influence to secure permission for one Daniel Wolstenholme, a non-associator, to go back to England. It was a characteristic kindly act of a kindly man.<sup>2</sup>

With it he vanishes out of our sight. Where he was or what he did in the next seven years is almost absolutely unknown. We catch one glimpse of him in a letter written by him to Walter Dulany, a fellow-exile from Maryland, from Bangor Place, on August 15, 1777. He tells Dulany that he expects to leave that place soon "on the Ramble for

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<sup>1</sup> Maryland Archives II, pp. 24, 43, 74, 81. July 9, his brother William wrote asking that a royal ship stop at Annapolis to permit Eden's family the opportunity of communicating with him.

<sup>2</sup> Maryland Archives II, pp. 87, 99, 100, 102, 104, 139, 149.

a fortnight, and then to Durham, and then to arrive in London again in the beginning of October."

Whether he stayed in England and watched the progress of the war from afar, or came back in the company of his brother, Sir William Eden, later Lord Auckland, one of the commissioners of peace, I have been unable to discover.

We have already quoted the opinion of Eden held by McMahon, who knew many of those who had been contemporaries with him, and we have seen what were the historian's views as to the Governor's character and popularity. These views were generally held. Eden was esteemed in the province he governed because of his rare tact and ability. He continued to receive the same high esteem in England, and soon found honors at home. Scarcely had he arrived in England, when, on September 7, Lord George Germain informed him of "the King's entire approbation" of his conduct in his Governorship and of his supporting his authority "under difficulties which were thought here to be insurmountable," as well as for "the judicious manner" in which Eden left his province when his "staying there was no longer practicable." In addition to this formal approbation, as a reward for such faithful service, King George III created Robert Eden of Maryland a Baronet. Eden at once replied to this letter, gratefully accepting the proffered honor, and professing that "this Favor can only add gratitude to zeal in my future endeavors to promote His Majesty's service, to the utmost of my abilities, on every occasion, wherein His Majesty may think proper to employ me." From September 10, the official date of the creation, he and his heirs male were to bear the dignity of Baronets.

Though we do not hear of Eden's activity during the next seven years, no sooner was the treaty of peace declared than he returned to Maryland, in the endeavor to regain some of the property he left here.<sup>1</sup>

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<sup>1</sup> Proceedings of Assembly Nov. 1783, p. 26, R. Smith, late Sec. to Gov. Eden, to have chest of books for the Governor.

The last known act of Eden was one which exposed him to some criticism, though probably without good cause. Certain incomplete patents for land were among the papers he left behind when he went to England in 1776. On his return the persons to whom they should have been issued asked for these patents to assure them in their title to their lands. He then filled out the documents by signing and sealing them. Some fifty or sixty such patents were presented at the Land Office for registry in January, 1784. The number of them excited inquiry, and, on examination, the ink was seen to be too fresh to have been put on the paper eight years before. It was claimed that Eden had a mistaken notion of his power or authority as Governor still subsisting. Some excitement was aroused, and Eden was formally asked concerning the matter. He acknowledged the facts without hesitation, denied that he claimed any authority, and said he was but paying a debt he owed when Governor, and the persons who received the patents conceived themselves entitled to have them, having acted on the supposition that he had signed them when Governor. This explanation seems to have been satisfactory, as we hear no more of the matter.<sup>1</sup>

While in Maryland he sickened and died of a dropsy following upon a fever, on September 2, 1784, in the house now owned and occupied by the Sisters of Notre Dame, in Shipwright street, Annapolis.<sup>2</sup> He was only forty-three years of age. He was buried in St. Margaret's Church, on the Severn. The church long since was burned, and in the cemetery there, in an unknown grave,<sup>3</sup> lies that true gentleman, the last Provincial Governor of Maryland.

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<sup>1</sup> *Maryland Gazette*, March 25, 1784. Kilty, Land Holders' Assistant, p. 280.

<sup>2</sup> Gentleman's Magazine, Volume LIV, p. 876. Ridgely Annals of Annapolis, p. 141.

<sup>3</sup> Riley, "Ancient City," p. 52-157.



The Transition of North Carolina  
FROM  
Colony to Commonwealth.



SERIES XVI

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IN  
HISTORICAL AND POLITICAL SCIENCE  
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History is past Politics and Politics are present History.—*Freeman*.

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The Transition of North Carolina  
FROM  
Colony to Commonwealth

BY

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## PREFACE.

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This monograph is designed to show the manner in which a Commonwealth government was substituted for a provincial government in North Carolina. The conditions that operated to produce this change and the spirit in which it was effected are considered in the new light thrown upon these subjects by the publication of the Colonial Records. The monograph is essentially a study in the constitutional history of the State.

In the preparation of this study valuable assistance has been rendered by Professor H. B. Adams, Dr. B. C. Steiner, Dr. J. H. Ballagh and President Charles E. Taylor, of Wake Forest College, North Carolina, for which the writer desires to thank them.



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# **The Transition of North Carolina from Colony to Commonwealth.**

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## **I.**

### **THE DOWNFALL OF THE ROYAL GOVERNMENT.**

The first settlers of North Carolina, fleeing from the oppression of religious bigotry or seeking simply the freedom of the forest, gave to the province a distinctive character. At times its democracy bordered on turbulence. As a Proprietary North Carolina was neglected, and little reverence was felt for Proprietary Governors. Under the direct care of the Crown, however, there was greater peace and harmony, but seldom was there a time when there was not a party sensitive to and ready to resist the encroachments of tyranny. The principle of popular sovereignty spread rapidly in New England from the township to larger communities, but this growth was longer in influencing Southern communities. They had the same spirit of Teutonic independence, but it was individualistic rather than collective as in New England. Nevertheless by 1760 the idea of popular sovereignty had taken deep root among these people of North Carolina. The principle had been frequently announced before the Revolution was thought of, but personal loyalty to the King, pride in the name of Englishmen and the infrequent exercise by England of her asserted right of absolute dominion over the colonies, permitted this idea to lie dormant. However, in 1760 this dormant principle awoke, and from that time to the outbreak of the Revolu-

tion there may be seen in the frequent opposition between the colonial assemblies and the English authorities signs of the awakening.

In North Carolina, as in many of the other colonies, there were local causes that brought the Royal Government into ill-repute. There were open mutterings of discontent, and complaints and protests were continually being sent up to the throne. In 1764 the Assembly protested against the tax on trade, and placed itself on record as to the question of colonial taxation. The armed populace resisted the enforcement of the Stamp Act, and informed the Governor that the act would be resisted "to blood and death." The agent was made to swear that he would not attempt to execute the law, while the Royal Governor looked on in helplessness. Governor Tryon saw the dangerous spirit that was developed, and endeavored to ingratiate himself into the favor of the people. He was successful in winning the good-will of many of the best men in the province, and these men helped to uphold the authority of England during his administration. Governor Tryon believed in conducting the affairs of government in a regal manner, even among backwoodsmen. Fond of display and pleasure, he made himself the leader in the sports of the day. Never had the people of the province witnessed so much refinement and extravagance as they then saw at the Governor's court. He was the most aristocratic of all the colonial Governors of the province, and prevailed upon the Assembly to appropriate funds for the erection of a Governor's palace.<sup>1</sup> This extra tax produced no good-will among the people. He also decided to run the boundary line between the province and the Cherokee Indians, but instead of appointing commissioners to do the work, he collected a large military retinue and crossed the State in grand and pompous style simply to run a line in the wilds of the western mountains.<sup>2</sup> Never before had the

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<sup>1</sup> General Maranda, the traveler, said that the palace was the finest in the New World at that time. Martin: vol. II.

<sup>2</sup> So magnificent was this cavalcade that Tryon won from the Indians the soubriquet of the "Great Wolf of Carolina."

people witnessed such extravagance, and many were displeased with what seemed to them a useless expenditure of public funds. By this extravagance Governor Tryon made himself very popular among the very men who afterwards became leaders in the Whig movement. A martial spirit was trained and nurtured by the Governor's policy, but its fruit was not destined to fall into the lap of Great Britain.

During Tryon's administration great complaint was raised, especially in the back counties, on account of illegal fees exacted by the Crown officers. Previous complaints had been made during the administration of Governor Dobbs. These exactions continued till the people grew desperate, and thus the Regulator movement was born. The people had determined to submit no longer. Governor Tryon went through that part of the province with troops raised in the vicinity, but no blood was shed at the time. Two years later the movement had increased to such an extent that court could not be held in that section. The Assembly finally advised the government to take troops and march to the scenes of the disturbance. These troops were mostly from the eastern counties, and thus began the civil war of the Regulation, terminating in the Battle of Alamance, May 16, 1771. Tryon's drastic measures effectually checked the spirit of disturbance, but the influence of this internal strife was felt long afterwards. Large numbers of the Regulators emigrated beyond the mountains to new homes and lands, rather than submit to the government of North Carolina. While this civil war was the result chiefly of social and economic conditions, it helped, nevertheless, to shape political sentiment in this and other provinces.<sup>1</sup> It furnished the agitators at Boston with an example of resistance to England by force. It was, indeed, a lesson to the whole country that was not forgotten. Tryon wrote to the home government that a British army would be weak in this hostile country. The campaign also developed the military

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<sup>1</sup> Bassett. *The Regulators of North Carolina* (A. H. A. Report for 1894).

organization of the colony. Another lesson in the art of warfare had been taught to the people. As a reward for his activity Governor Tryon was transferred to the province of New York, and his removal destroyed the influence that the Royal Government had with the aristocratic element in North Carolina society.

In August, 1771, Josiah Martin, last of the Royal Governors of the province, took up the administration. Martin was neither a statesman nor a diplomat. He had been trained in the army, and suffered from exaggerated conception of duty to his superior officers. He was a plain, blunt man, and devoid of Tryon's happy faculty for ingratiating himself into the favor of the most prominent men of the province. He allied himself rather with the disaffected, granted them pardons and visited their section of the country. With the Scotch Highlanders who kept pouring into the country he made a close friendship. He succeeded in placating the injured feelings of the Regulators and winning the favor of the Scotch immigrants. But by criticising the popular Tryon he lost the esteem of many of the best men. Governor Martin's administration had fallen within grievous times. To him Tryon bequeathed the settlement of the Regulator troubles and the payment of the expenses of the military expedition. Questions that Governor Tryon had succeeded in postponing were now coming to a head. A politic Tryon might have created even now a strong royal party, but an impolitic Martin, never. To attempt to force extreme views of the royal prerogative upon these people at this time was not only impolitic, but foolish. Under Governor Martin's administration there was a conjunction of three local causes which are ever productive of political discontent and disturbance, and often the mother of revolution. These causes were a special tax which was considered unjust, a boundary line in dispute, and an unsatisfactory judicial system. Between these shoals Governor Martin was not able to steer his vessel.



## FINANCIAL CONDITION—SPECIAL TAXES.

The financial condition of North Carolina in 1770 was miserable. There was little gold or silver in the province. There were no mines nor mints; the balance of trade was such as to carry out again what metallic money happened to find its way into the province.

Of paper money there was only a limited amount, consisting of provincial notes of various kinds. Commodities even had been made legal tender at rates specified by law. The British Parliament had passed an act forbidding the province to issue more paper currency as legal tender. Governor Tryon appeased for the moment the disquietude that prevailed by promising to use his influence at court to secure remedial financial legislation. Not one of the currency bills, however, became a law. The question of how to pay the expenses of the Regulator campaign absorbed the attention of the Legislature. Finally, they had recourse to the creation of a new debt. Debenture notes, or simple promises to pay, were issued. There being no better currency in the country, these found no trouble in getting into circulation; counterfeit money even would have circulated.<sup>1</sup>

The province had contracted heavy debts. Most of the £75,000 of debts at the close of Governor Dobbs's administration had been contracted for the purpose of carrying on the French and Indian war. To this debt Governor Tryon has added some £40,000 or more, and to this was to be added £60,000 debenture notes for defraying the expenses of the campaign against the Regulators.<sup>2</sup>

But the feature of the financial trouble which served most to wreck Governor Martin's administration was the special tax of one shilling levied on each poll, and an impost duty of four pence on imported liquors, to meet emissions of paper currency made in 1748 and in 1754, the amount to be liquidated being £61,350. On December 6, 1771, Mr. Burgwin, clerk of the Committee of Accounts, reported to the

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<sup>1</sup> C. R. Pref. Notes, IX.<sup>2</sup> C. R. II, Pref. Notes, XVI.

Assembly an account of the public funds, in which he stated that already more than enough had been collected to pay the appropriation of £61,350; that already £53,104 had been burned in accordance with law, and that over £12,000 were on hand.<sup>1</sup> When the Assembly heard of this they came to the conclusion that as the object of these special taxes had been attained, therefore the taxes ought no longer to be collected. A bill was accordingly introduced for the purpose of preventing the further collection. The Governor declared that the bill was teeming with frauds; and, of course, disallowed it.<sup>2</sup> The Assembly expected the bill to be rejected, and girded themselves for the fight. Resolutions were proposed discontinuing the tax and indemnifying sheriffs for non-collection. These resolutions were intended to be entered upon the journals in case the Governor refused to consent to the proposed bill, but the Governor was shrewd enough to reject the bill and prorogue the Assembly at the same time.<sup>3</sup> But Speaker Caswell determined not to be outwitted, and, therefore, communicated the resolutions to the treasurer as an order from the Assembly, and, consequently, the taxes were omitted from the tax lists sent to the counties for collection.<sup>4</sup>

The Governor was indignant, and called together his Council. It was decided that a proclamation should be made ordering the sheriffs to collect these taxes, under penalty of being sued on their bonds.<sup>5</sup> Governor Martin claimed that the clerk's report was incorrect; that the sinking fund had not been employed for that purpose alone, but, instead, had been appropriated to various purposes; that sheriffs and collectors of taxes had become insolvent or fraudulent, and that notes redeemable by this tax were still in circulation.<sup>6</sup> Governor Martin was probably correct in his views; the disbursement of the funds collected had not been made for purposes of redemption.

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<sup>1</sup> C. R. IX, pp. 124-166.

<sup>2</sup> C. R. IX, p. 333.

<sup>3</sup> C. R. IX, p. 233.

<sup>4</sup> C. R. IX, Pref. Notes, XVII.

<sup>5</sup> C. R. IX, p. 329.

<sup>6</sup> C. R. IX, p. 231.

The King was highly pleased with the course of Governor Martin in putting an end to an Assembly which "acted so little upon principles of justice," and instructed the Governor to refuse his assent if Caswell should be again elected Speaker.<sup>1</sup> The tendency toward democracy was too strong to please either Governor Martin or the British Government. The people felt little inclination to pay debts contracted, not for their welfare, but for the maintenance of royal authority. Neither Governor Tryon nor Governor Martin nor President Hasel, of the Council, believed that the people of the province were willing to defray the expenses of the expedition against the Regulators.<sup>2</sup> Accordingly, the Assembly that voted the expedition was not dissolved till it had also voted the payment for the expedition, a course contrary to the instructions of Governor Martin from the home government.

The next session of the Assembly was so occupied with the Court Act that no attention was paid to the tax, but when the Assembly met again, in December, 1773, resolutions were again passed declaring that the special tax had accomplished its purpose. The Assembly went further, and on March 24, 1774, instructed the treasurer to issue orders to sheriffs not to receive from any of the inhabitants of the province the poll-tax for the year 1774, or for any subsequent year. The poll-tax was especially hard, it was felt by the poor keenly, there being no property tax in the province.<sup>3</sup> The collectors of the import duties were ordered to desist from collecting after May 1, 1774, under pain of the censure of the House. The Assembly further determined to indemnify any person for all damages incurred by acting in obedience to their orders.<sup>4</sup> Governor Martin prorogued the Assembly because of this measure of repudiation, but when it met again it returned to the fight. Governor Martin accused the Assembly of trying to arrogate all power to itself, and to abrogate solemn statute without consulting the

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<sup>1</sup> C. R. IX, p. 301.

<sup>2</sup> C. R. IX, Pref. Notes, XII.

<sup>3</sup> Pref. Notes, C. R. IX.

<sup>4</sup> C. R. IX, p. 944.

Governor. From a legal point of view he was right, but with these men the distinction between legality and illegality was fast losing its significance. Financial distress forced the Assembly to show its strong hand; there resulted a sharp clash between the Executive and the Legislature, and in this state affairs remained till the end came, which was now not "more than a Sabbath Day's journey distant."<sup>1</sup>

But still another legacy was left to Governor Martin, in the character of the territorial boundary of the province on the south.

#### THE BOUNDARY DISPUTE.

In the year 1736, commissioners appointed by the Legislatures of North and South Carolina began to run the dividing line between the two provinces. The King had fixed the beginning of the line at the northeast end of Long Bay, and directed it to run thence, northwestwardly, to the thirty-fifth degree north latitude, and then westward to the South Seas. The line, however, had only been run sixty-four miles when it was agreed that the eastern and northeastern frontiers of the lands of the Catawbas and Cherokees should be considered the boundary line till it was further extended.<sup>2</sup> By 1763 the line had been extended in a westwardly direction to the Salisbury and Charleston road.<sup>3</sup> On December 16, 1771, Governor Martin received instructions from the King confirming the line as already run, and authorizing its extension in accordance with accompanying instructions. But the King's orders did not instruct the continuation of the line in due west course. The new instructions were that the further extension of the line should be from a point further north. In 1768 Governor Montague, of South Caro-

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<sup>1</sup> Some money collected on account of this special tax was in the treasury when the Third Provincial Congress met at Hillsboro in Aug. 1775. It was ordered to be returned to the payers or accepted in payment of future taxes. C. R. X, p. 175.

<sup>2</sup> Martin II, 26.

<sup>3</sup> C. R. IX, p. 191.



lina, had proposed to Governor Tryon the running of a permanent boundary line, but Tryon condemned the proposed line as ruinous to the province, and wrote to the home government setting forth his objections. Montague was in favor at the Court, and so secured instructions describing the permanent boundary line as he had designed it. Such was the standing of the boundary dispute when Governor Martin received his instructions respecting it.

Governor Martin immediately communicated with the Assembly, and asked for appropriations for the purpose of carrying out the instructions. He seemed anxious to carry them out, but the Assembly was not pleased with them, for it meant a loss of territory.<sup>1</sup> This proposed line would dismember from the northern province a well-peopled and flourishing tract of country.<sup>2</sup> This land was in great demand at that time among new settlers, and the Governor received considerable emoluments from the grants he had issued.<sup>3</sup> Though the proposed line was injurious to Governor Martin's income, as well as to the province, he took immediate measures for extending it. But the Assembly refused to make the appropriations asked for. They replied to Governor Martin's request by saying that the plan had been brought before a former Assembly and had been considered so injurious to the province that Governor Tryon used his influence against it, and they requested him to declare to His Majesty that it would deprive them of a great many useful inhabitants, by law and custom engrafted into their Constitution, would counteract a number of established laws, and

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<sup>1</sup> The instructions were that commissioners should proceed jointly with commissioners from South Carolina to continue the "line up the Salisbury road to where it entered the Catawba lands; from thence along the southern, eastern and northern boundary of the said lands to where the Catawba river entered them on the north; from thence, to follow the middle stream of said river northerly to the confluence of the northern and southern branches thereof, and thence due west till it reached the line agreed upon with the Cherokee Indians." C. R. IX, p. 191.

<sup>2</sup> Letter of Governor Martin, C. R. IX, p. 49.    <sup>3</sup> C. R. IX, p. 49.



take from the province many tracts of valuable land then held by grant from the Governor of North Carolina, and that it would almost destroy their trade with the Indians. They further declared that they had spent enough in running boundary lines, and were not willing to burden their constituents more heavily. So they appointed Howe, Harnett and Maurice Moore a committee to address the King,<sup>1</sup> December 21, 1771.

Governor Martin was not tactful, nor did he know when to temporize. Disregarding the feelings of the Assembly, he appointed commissioners to run the line in accordance with the new instructions. This the commissioners did in the summer of 1772. Governor Martin was never pleased to meet the General Assembly, so there was no meeting in the year 1772. When the Assembly met in March, 1775, Governor Martin requested that his commissioners be paid for their service in running the line, and also told the Assembly that the King was displeased at their conduct of the last session in intimating that the throne had a predilection for South Carolina, and had not at heart the general interests of the two Carolinas.<sup>2</sup> But the Assembly refused to pay the expenses of the commissioners, saying that instead of gaining, the province had lost millions of acres of land, and that South Carolina might pay it, since she alone had profited by it.<sup>3</sup> The Assembly refused to make the allowance<sup>4</sup> or to approve the line, and reminded the Governor that the province had just incurred a debt of £60,000 in sup-

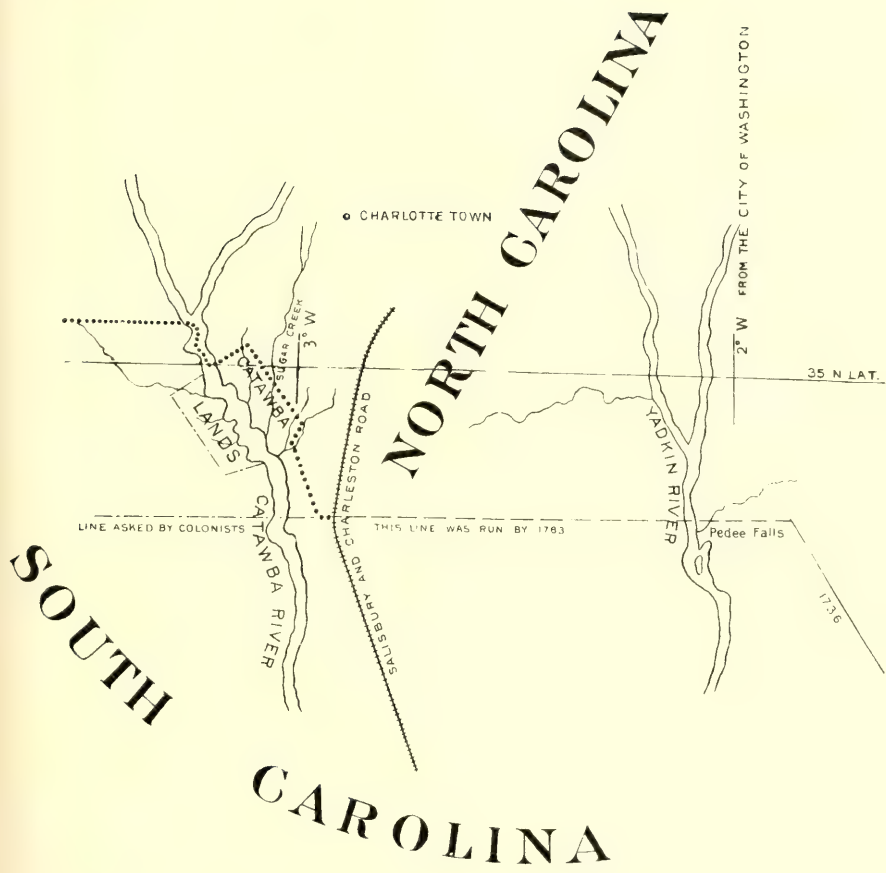
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<sup>1</sup> C. R. IX, p. 212,

<sup>2</sup> C. R. IX, p. 562.

<sup>3</sup> Before the line was run, South Carolina had agreed to pay all expenses. Letter from Governor Martin, C. R. IX, p. 638.

<sup>4</sup> Thomas Polk, of Mecklenburg, was popular in both branches of the Assembly. He was appointed a Commissioner, but the Assembly refused Governor Martin's request to pay him, declaring at the same time that any person who would engage in such an enterprise was no servant of the province and therefore entitled to nothing from it. Polk's popularity could not save him from the condemnation of the Assembly. C. R. IX, 500 Jones : 80.



THE DISPUTED BOUNDARY.

LINE IN DISPUTE.....



pression of the Regulator insurrection against His Majesty's government, and that they felt excusable for refusing to incur any further expense.<sup>1</sup> The Assembly was anxious to compromise the dispute, and declared its willingness to pay even the whole expense of a new line, but remained firm in its refusal to pay for the present line.<sup>2</sup>

Governor Martin spoke well of this region of the province at first, but now his letters became very denunciatory, calling the inhabitants lawless and licentious banditti, who disclaimed the jurisdiction of either province when it suited their purpose and who paid taxes to none.<sup>3</sup> These border counties doubtless were rough and uncultivated, but few things appeal to a people more strongly than injustice that diminishes their territory. The succeeding Assemblies made no mention of the dispute; they were waiting for the royal answer to their petition, and were engaged in another controversy.

The Constitutional Convention at Halifax in 1776 declared in the Bill of Rights what the southern boundary line should be. The line described was the line that the commissioners began to run in 1738.<sup>4</sup> The authors of this clause in the Constitution knew very little about the boundaries of their own State, or were very magnanimous to the southern province, for the parallel, thirty-five degrees north, declared to be the southern boundary, not only deprives the province of half the disputed territory, but a large tract of country to which its title was undisputed. The final settlement of the boundary disputes was left for more quiet times. The line remains today, not as declared in the Bill of Rights, but very much as Governor Montague's royal commission prescribed it. North Carolina is indebted to King George III for the marked irregularity of the southern boundary in the vicinity of the Catawba river, and not to fear of the Indians as local legend has it to this day.

But there was still another inheritance, whose conse-

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<sup>1</sup> C. R. Vol. IX, p. 563.

<sup>2</sup> C. R. IX, p. 578.

<sup>3</sup> C. R. IX, p. 312.

<sup>4</sup> Martin : II, p. 26.

quences were more important than the others, and this was a phase of the Judicial System.

### THE COURT CONTROVERSY.

Too little stress has been laid upon the influence of economic conditions in bringing about the disruption of the established systems of government in the American colonies. In North Carolina social and economic causes served to irritate and exasperate the feelings of the people. To be robbed of a portion of their territory was a crime they could not excuse, and for their own Governor to be *particeps criminis* was an affront not calculated to allay their feelings. Compulsion for the payment of special taxes intensified the discontent, and the causes of financial distress were laid at the door of the government. The colonists saw that the larger share of their indebtedness had been contracted for the purpose of maintaining the government of Great Britain, and that that same government in return had refused their prayers and insulted their dignity as a free province. But these economic causes did not furnish the means of striking at the government in so vital a part as did a judicial question which now came into prominence. This question precipitated matters in North Carolina and locked the wheels of administration. The judicial system was ever a fruitful cause of complaint and grievance in the province. It had vexed the administration of Governor Dobbs, and had been a subject of legislation under Tryon.

Of all the questions that arose to vex Governor Martin, the most troublesome was the controversy about the courts. It arrayed against him the legal profession and a large portion of the office-holding class, and in the end the Governor had to succumb to the opposition.

*The Provincial Court System.*—The Common Law Courts, constituted for the better administration of justice in the province, were three in number—the Superior Court, the Inferior Court and Magistrate's Court.



(a) *Superior Courts*.—The province was divided into several districts, usually six or seven. In each of these districts a court was held twice a year generally, and was presided over by the Chief Justice of the province and by the Associate Judge of the district sitting jointly, or by either in the absence of the other. Frequent disputes arose as to the power of an associate judge. When the last Royal Governor came to the province in 1771, there were the Chief Justice and two Associates appointed by the Governor.<sup>1</sup> In the Chief Justice and his Associates were lodged all the powers usually vested in the King's Bench and Court of Common Pleas in England. Their jurisdiction extended to all matters at Common Law above twenty pounds currency in civil actions, and to those in criminal actions where life or limb were concerned. This court was also a Court of Appeal, and might issue letters of administration; it had equity jurisdiction in common with the Court of Chancery. The Chief Justice frequently had the power to appoint clerks in all the districts.

(b) *Inferior Courts of Pleas and Quarter Sessions*.<sup>2</sup>—This was a court both of law and equity, and was held four times a year in every county of the province. This court was composed of the justices of the peace of each county, and its jurisdiction was limited. In civil actions it was generally restricted to twenty pounds in currency. This court had the power to fine, imprison, inflict corporal punishment, such as pillorying and whipping. Though their powers were restricted, they were very important. These courts granted orders for the administration of intestate estates, just as the Superior Court took bonds and securities, probated wills and granted letters testamentary. Deeds for personal and real estate were filed mostly with this court. In causes under five pounds they decided without a jury. These courts had charge of county officers in general. The judges held their commissions from the Governor. They received

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<sup>1</sup> Jones: 84.

<sup>2</sup> C. R. Vol. VIII, pp. 479, 480.

no pay. The offices were much sought after by the very best men, as it gave them an influence in public affairs.

(c) *Justices' Courts*.—In every county there was a large number of "Conservators of the Peace." Governor Tryon estimated in 1767 that there were at least 516 acting justices in the province. Their commissions were issued by the Governor. Their jurisdictions were limited to debts or demands of not more than forty shillings generally, but an appeal lay from their decrees to the Inferior Court, which was simply the meeting of the justices in a body. The Lower House of the Assembly was largely composed of justices of the peace, and this fact largely accounts for the very active interest always manifested by this body in all Court Laws.<sup>1</sup>

*Instability of the Court Laws*.—The legislative power of the province resided in the Governor, representing the Crown, the Council acting as the Upper House, and the Lower House representing the people. The Governor could not initiate legislation, but could negative it. The laws, when passed, were forwarded to the Crown for approval or rejection. The Crown thus held a definite check on colonial representation. The Court Laws were temporary, and their existence was generally limited to a certain specified period, as to the close of a certain session of the General Assembly. The periods were commonly no longer than two years.<sup>2</sup> This necessitated frequent legislation, which, with oft-recurring agitations, familiarized the province with the meaning of the laws. When a new court system was to be produced, complaints were always brought forward. The question of how the judges should be paid always disturbed their deliberations. The Lower House was anxious that the judiciary should not get beyond their control, and they saw that they could best control the system through the salaries of the judges. There was also a contest over the jurisdiction of the associate judges. Such

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<sup>1</sup> C. R. Vol. VII, p. 481.

<sup>2</sup> Martin: Vol. II, p. 169.

disputes worried the closing days of Governor Dobbs.<sup>1</sup> In all these contentions the province was largely successful. No political subject had been so much discussed as the court system under the Royal Governors.

*The Tryon Court Law of 1768.*—When Governor Martin, the last of the Royal Governors,<sup>2</sup> came to the province in 1771, he found the court system established under Governor Tryon in vogue. Governor Tryon, though he had had to contend with the civil war of the Regulation, was still regarded with feelings of respect and friendship by the men who at a later day composed the patriotic party. The Court Laws passed under his administration were an improvement upon any former system. The general features of the act were the same, but it was made more permanent. Its duration was extended to five years instead of to two, as formerly. There was an addition made, which seems to have attracted little notice at the time, but which was destined at the expiration of the act to be the cause of very important results.<sup>3</sup> This clause was the one pertaining to *foreign attachments*. "A Foreign Attachment is that process by virtue of which the property of an absent debtor is seized for the purpose of compelling an appearance, and, in default of that, to pay the claim of the plaintiff."<sup>4</sup> By this clause in the Court Law the province acquired a right to attach the effects of foreigners and non-residents for debts contracted, whether such foreigners or non-residents had ever resided in the province or not. When the law was about to expire in 1773, there began a warfare which was to continue till the royal power became too weak to wage it longer. This was the rock on which provincial government came to shipwreck.

*Royal Instructions to Governor Martin.*—The new Assembly under Governor Martin convened in New Berne, January, 1773. The Lower House elected for its Speaker John

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<sup>1</sup> Jones' Defense, p. 83.

<sup>2</sup> Martin's Hist. North Carolina, Vol. II, p. 231.

<sup>3</sup> C. R. Vol. IX, p. 373.

<sup>4</sup> Bouvier's Law Dict., Vol. I, p. 599, Liber Albus, 183.

Harvey, one of the leading Whigs of the province. In the Lower House for twenty years the test of "loyalty to the people" had been opposition to the prerogatives of the Governor.<sup>1</sup> This Assembly contained many of the best and wisest leaders in the province, such men as Hooper, Caswell, Ashe and Johnson were in the Assembly.

In his address at the opening of the session, Governor Martin stated that the King had granted pardon to all those engaged in the Regulation rebellion, and that he himself had traveled through their section during the last summer and saw no signs of discontent. Governor Martin entered upon his duties under auspicious circumstances. This address drew attention to the fact that the present Court Laws establishing Superior and Inferior Courts would expire at the end of this session of the Assembly.<sup>2</sup>

The Assembly appointed a select committee to frame a Court Law, and it also furnished instructions how they should frame it. The Assembly instructed them to make provisions in one bill for the establishment of Inferior and Superior Courts, and to vest the power of granting letters of administration and testamentary in the Inferior, to the exclusion of the Superior Courts, and to extend the jurisdiction of single magistrates to causes of the value of five pounds.<sup>3</sup> This committee made their report, and in it was contained the foreign attachment clause. The Governor learned of it, and sent to the Assembly a copy of his instructions from the Crown. The instructions were as follows:<sup>4</sup> "Whereas, laws have been passed in some of our colonies and plantations in America, by which the lands, goods, chattels, rights and credits of persons who have never resided within the colonies where such laws have been passed, have been made liable to be attached for the recovery of debts, in a manner different from that allowed by the law of England in like cases; and whereas it hath been represented

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<sup>1</sup> Jones : 80.

<sup>2</sup> C. R., Vol. IX, p. 378.

<sup>3</sup> Martin: p. 294.

<sup>4</sup> C. R. Vol. IX, p. 235.

unto us that such laws may have the consequence to prejudice and obstruct the commerce between this Kingdom and our said colonies, and to affect public credit, it is therefore our will and pleasure that you do not, on any pretense whatsoever, give your assent to or pass any bill or bills in our province under your government, by which lands, tenements, goods, chattels, rights and credits of persons who have never resided within our said province shall be made liable to be attached by recovery of debts due from such persons otherwise than is allowed by law in cases of a like nature within our Kingdom of Great Britain, until you shall first have transmitted to us by one of our principal secretaries of state, the draft of each bill or bills, and shall have received our royal pleasure thereupon, unless you take care in the passing of such bill or bills that a clause or clauses be inserted therein suspending and deferring the execution thereof until our royal will and pleasure shall be known thereupon."

*Foreign Attachments in England.*—The right of Foreign Attachments in England was a very old municipal privilege. London, York and Bristol had held it by ancient custom. The process of the attachment seems to have been originally to compel the appearance of the defendant by sufficient sureties to answer the plaintiff's demand upon him. It was justly considered that the merchants of great mercantile cities would have debtors resident in foreign countries, with no means, except by their property in the city, of rendering them amenable to the English courts of justice.<sup>1</sup> This privilege enabled the creditor to attach the money, debts or goods of his debtor in the hands of a third person, and so to deprive the owner of all control over the subject of the attachment until he "appears to answer the claim of his creditor or until the debt is satisfied."<sup>2</sup> In London, the Lord Mayor's Court had jurisdiction over such

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<sup>1</sup> Wolsey: *Foreign Attachments*, p. 23.

<sup>2</sup> Locke: *Law and Practice of Foreign Attachment in Lord Mayor's Court*, p. 19.



questions. The right of Foreign Attachment was considered the most important power possessed by suitors in this court.<sup>1</sup> It was an advantage to a commercial community, to be readily able to apply the property of an absent debtor, wherever it might be found, in payment of his creditor. It was particularly beneficial to a city much frequented by foreigners who might contract debts and then remove beyond the jurisdiction, beyond the power of personal process. It also placed great power in the hands of creditors, enabling them to lay an embargo upon the goods of their debtors which could not then be employed in the discharge of any commercial engagement with third parties until the attachment was removed. The right of Foreign Attachment was one always renewed by the Crown to the city, and one for which the city corporation always contended.<sup>2</sup>

The Upper House, or Council, was well disposed generally to any measure favored by the Crown. They held their offices by Royal appointment. But the Lower House seemed to feel that they owed allegiance only to their constituency. Though their messages to the Governor were always couched in language expressive of devotion to the Crown, their actions were very independent. This House refused to give up the attachment clause. They maintained that it was highly inconsistent with the commercial policy of the province to relinquish its benefits; that it was their only means of security against non-resident creditors; that the privilege was enjoyed by many, if not all of their sister colonies; that certain municipalities in Great Britain enjoyed the same, and that they could discover nothing in their Constitution to justify a treatment so injurious to them. The House was very much excited over the subject, and their communications contain lengthy arguments in justification of their course. They felt that their province was not receiving just and equal treatment. In reply to a message from the Council they said that the bill as proposed by the

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<sup>1</sup> Locke: p. 19.

<sup>2</sup> Bohun: *Privilegia Londoni*, pp. 254, 255.

Council would guard the effects of persons resident in neighboring colonies, but that their own would at any time be subject to attachment.

If the Crown thought to deceive the province by granting them the right to make such laws as were found in the laws of England, the Crown itself was deceived. The House passed resolutions that it was the sense of the body that by the laws and statutes of Great Britain no provision whatever was made for attachments; that the privilege existed as a municipal franchise governed by particular circumstances of place and people, and so essentially local in application as not to permit being extended by any analogy to the province.<sup>1</sup> The Council took the ground of expediency, that if the clause were not *deled* there could be no Court Law passed, and that the royal instructions to the Governor were very explicit; but the Council's arguments failed to move the House. The House replied that while they felt the many disadvantages that would arise from a failure to pass the laws, they were also conscious of the many benefits that had accrued to them from the rights they had enjoyed, and that they were unwilling to part with them and would suffer first.<sup>2</sup> After much wrangling a bill was passed by both Houses containing the attachment clause. The Governor signed it with a suspending clause till the royal will was known. The firmness and determination of the House had won in the first battle.

But the contest raged as warmly as ever. Some immediate measures were necessary, so separate bills were introduced for the establishment of Superior and Inferior Courts. The bills had passed several readings when the Council added an amendment to the Superior Court bill exempting from attachment the estates of persons who had never resided in the colonies. This occasioned the parting of the ways again. The House refused to accept any amendment of that kind. After disputing for several days, the Council

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<sup>1</sup> C. R. Vol. IX, p. 436.

<sup>2</sup> C. R. Vol. IX, pp. 558, 559, 560.

refused to pass the Superior Court bill; the Inferior Court bill was passed, but the Governor refused his assent.<sup>1</sup> This destroyed the last hope of sustaining the administration of law. On Saturday, March 6, 1773, the House came to the unanimous resolution that the right of attaching the property of non-resident creditors had long been exercised by this province in common with other colonies in America, and several trading cities in England; they also ordered that this resolve and all communications respecting the subject which had passed between them and the honorable Council be published in all the gazettes in the province, in Virginia and in South Carolina, and that the Clerk of the House see this resolution put into execution.<sup>2</sup>

When the Governor heard of this he prorogued the Assembly till Tuesday, the 9th, to give them time to calm their excitement.<sup>3</sup> When Tuesday, the 9th, came, there was no session of the Assembly. The Governor called together his faithful and submissive Council and announced to them that the Clerk of the House had advised him that there were not members enough in town to make a House. The Governor and his Council agreed that fifteen constituted a quorum, according to royal instructions. Accordingly, the Governor sent a message addressed to the Speaker of the House of the Assembly informing him that fifteen constituted a quorum, and that he, the Governor, was ready to proceed to business. Speaker Harvey replied immediately to this message that it was the opinion of the members of the House then in the town, that it was not consistent with the duty owed to their constituents to proceed to business without a majority of the representatives of the people.<sup>4</sup> The Governor could not realize that the members would simply take their departure without consulting him, and leave him alone to govern the colony. So after advising with the Council, he sent the following message to Speaker Harvey: "I de-

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<sup>1</sup> C. R. Vol. IX, p. 534 ; Martin : pp. 293-298.

<sup>2</sup> C. R. Vol. IX, p. 581.

<sup>3</sup> C. R. Vol. IX, p. 587.

<sup>4</sup> C. R. Vol. IX, p. 595.

sire to know whether you have or have not the expectation or assurance that more members of the House Assembly than are now in town will appear this day to carry on the public business of this county."<sup>1</sup> Speaker Harvey replied at once that he had not the "least expectation of the arrival of any more members, and that most of those in town were preparing to return home." In this emergency, there was no alternative but to dissolve the Assembly. When the Council had met and considered how the "Assembly had deserted the business and interests of their constituencies and flagrantly insulted the dignity and authority of government," it was decided that the Governor should at once issue a proclamation dissolving the Assembly. This the Governor did March 9, 1773.<sup>2</sup>

The Executive and the Legislature had come to a complete and open rupture. The Legislature had refused to make laws, so there were none to be executed. The dissolution of the Assembly left the province with no form of government but a Governor not responsible to it, and his faithful Council.

Governor Martin wrote on April 6, that the regular course of law was suspended by his refusal to sign the Acts of the last Assembly for establishing courts.<sup>3</sup> The condition of the province was peculiar. There were only five provincial laws in force throughout the colony. There were no courts in existence except the Magistrates' Courts. No one could recover a debt except before a single magistrate, whose jurisdiction was very limited. Offenders escaped with impunity. The people were in great consternation about the matter, and what the consequences would be was problematical.<sup>4</sup> The country was in a very unenviable position. The vicious felt that all restraint was now removed, and hence the gaols were soon filled.<sup>5</sup> In civil affairs, the intelligent referred cases in dispute to the gentlemen of the bar for adjudica-

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<sup>1</sup> C. R. Vol. IX, p. 595.    <sup>2</sup> C. R. Vol. IX, p. 625.

<sup>3</sup> C. R. Vol. IX, p. 625.    <sup>4</sup> Quincey's Journal, C. R. Vol. IX, p. 611.

<sup>5</sup> C. R. Vol. IX, p. 686.



tion.<sup>1</sup> Governor Martin felt the difficulty into which the province had fallen, and sought for means to remedy it. He issued Commissions of Oyer and Terminer for the trial of criminals in the several gaols of the province. In making his appointments of justices to assist the Chief Justice in holding these courts, Governor Martin displayed more tact than usual. Maurice Moore and Richard Caswell were prominent leaders of the Whig movement, but Governor Martin appointed them associates to hold courts of Oyer and Terminer. According to Governor Martin's statements, these courts helped to maintain order. Anyhow they were very active, for in a few months ten persons had suffered for capital offenses.<sup>2</sup> But Governor Martin found little repose. He wrote to Earl Dartmouth that there was a class of "restless politicians who drew into question the legality of such courts, who claimed that the consent of the Assembly was necessary to create any court, and that the power to issue the commissions was a part of the royal prerogative, which was incommunicable." Thus things continued during the summer and autumn of 1773.

Governor Martin, when he dissolved the Assembly on March 9, issued writs of elections, returnable May 1 following. He observed, however, that the same representatives for the most part had been re-elected. This expression of approval on the part of the people caused him to postpone calling the Assembly from May till December, 1773.<sup>3</sup> The measure for which he had prorogued them had induced their constituents to return them. The opposition to the Royal Government was strengthened during this interim. The Courts of Oyer and Terminer were regarded as illegal. The news that the Crown had refused to permit the Court Bill with the suspending clause to become a law made the people feel that little was to be expected from the government.

The new Assembly met December 4, 1773. Governor Martin's address was almost wholly taken up with the court

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<sup>1</sup> Life of Iredell, Vol. II, p. 152.

<sup>2</sup> C. R. Vol. IX, p. 687.

<sup>3</sup> C. R. Vol. IX, p. 686.



question. The Council was still obsequious to the Governor, but the House was determined to oppose his prerogative. Governor Martin informed the Assembly of his instructions, and stated plainly the only principles on which a Court Law might be established and meet the approval of the Crown. The instructions were conciliatory in tone, and granted that provisions might be made for attachment where the cause of action arose within the province, but with this proviso, that due proof had to be made upon oath, before such attachment issued, that the defendant absconded to avoid payment of debt, and that the ordinary process could not be served upon him.<sup>1</sup> As to the limitation of the original jurisdiction of the Superior Courts and the extension of that of the Inferior Courts, the Crown deemed that totally inadmissible, but the Inferior Court was granted a slight extension of jurisdiction.<sup>2</sup> The Governor also recommended that provisions be made for the payment of the judges who had held Courts of Oyer and Terminer.<sup>3</sup>

The Council made a reply, thanking the Governor for the free and frank communication of the terms on which a court system might be organized, and approving his establishment of Courts of Oyer and Terminer.<sup>4</sup> The answer of the House had a different tone. They replied that they would hasten to frame laws for the establishment of Courts of Justice in such a manner as best suited the convenience and situation of their constituency; that they did not deem the mode of attachment recommended sufficient, and therefore they could not adopt it; that the power of issuing Commissions of Oyer and Terminer could not be carried into execution without the consent of the Legislature, and hence they could not, consistent with the justice due their constituents, make provision for defraying the expenses attending a measure which they did not approve.<sup>5</sup>

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<sup>1</sup> C. R. Vol. IX, p. 707.

<sup>2</sup> C. R. Vol. IX, p. 708.

<sup>3</sup> C. R. Vol. IX, p. 708.

<sup>4</sup> C. R. Vol. IX, p. 711.

<sup>5</sup> C. R. Vol. IX, p. 738.

The Council urged the House to accept the bill, even on the grounds of expediency; that it contained ample provisions for the administration of justice; that it was an inestimable good which the representatives of the people were rejecting for the comparatively small advantage supposed to lie in the proceeding by attachment, and that if they withheld their consent they would soon find that the wretchedness of the country was not half complete. But the House paid little regard to the argument of expediency. They were not versed in those means by which principles are held in abeyance for the sake of expediency. They replied that they had been sent there by their people, and that they proposed so to guard their privileges and rights as to preserve them inviolate to the present age, and transmit them unimpaired to posterity; that they regretted the unhappy consequences that attended the extinguishment of civil and criminal jurisdiction in the province; that they dreaded the continuance of the calamity, but would submit still to suffer in order to avoid a greater misfortune, and that they did not reproach themselves for past grievances, for an impartial world would do them the justice to own that they contended for nothing more than what they had till lately enjoyed in common with the other colonies. The House also adduced arguments showing that the attachment clause was essential to the happiness and prosperity of the colony.<sup>1</sup> On the 20th December this message was ordered to be sent to the Council.

The next day the House received a verbal message from the Governor requiring their immediate attendance at the palace. But "immediate attendance" were words ominous to the House. They were familiar with the sudden prorogations of Parliaments, so they resolved unanimously to appoint a committee to prepare an address for the King, setting forth the deplorable condition of the colony, and their reasons for insisting on the privilege of attachment. They further resolved that this committee should present the peti-

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<sup>1</sup> C. R. Vol. IX, pp. 729-732.

tion not through their own Governor, but through Governor Tryon, of New York, who had formerly been Governor of North Carolina. This probably was an intended slight toward Governor Martin.<sup>1</sup> His letters at this time show that he was somewhat jealous of the reputation and popularity that Governor Tryon had won in the colony.

The House waited upon his Excellency at the palace, where he informed them that he had seen so much time wasted by them and such great expenses incurred in vain, that he thought any longer attendance was to no purpose, since they had refused to adopt any plan for the administration of justice with which he had it in his power to comply; that they might now go home and consult their constituencies, and state to them candidly the principles for which they contended, and ask them if they were willing to relinquish all the blessings, all the advantages, and all the securities for their lives, in a contention for a certain mode of proceeding against debtors.<sup>2</sup>

So the Assembly was prorogued on the 21st December, 1773, after a fruitless session of seventeen days.

There was now left in the colony not even a Court of Oyer and Terminer. Royal authority had grown impotent. The temper of the House had been such that Governor Martin wrote that he prorogued it to keep them from passing still more outrageous measures.<sup>3</sup> So long without courts, disorders must have continued to increase and men to lose respect for law.

When the Assembly met again Governor Martin addressed them concerning the Court Laws. He said: "I cannot doubt your wishing for opportunity to deliver it (the county) from the disgrace and ruin to which it is now and has been long exposed, by the total privation of every judicial power, and that you will, with true public spirit, postpone all lesser considerations to the redemption of its credit and reputation. I presume I meet the Assembly fully in-

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<sup>1</sup> C. R. Vol. IX, pp. 786, 787.

<sup>2</sup> C. R. Vol. IX, p. 779.

<sup>3</sup> C. R. Vol. IX, p. 791.

formed of the sense of its constituents relative to the difficulties that have arisen concerning the Court Laws, and which unhappily rendered your last two sessions abortive, and I shall rejoice to find it inclines the representatives of the people to accept the modifications I proposed at the last session with respect to attachment. But if, contrary to my wishes, they are still deemed inexpedient, I have that confidence in your regard for the welfare of this province that you will not longer make the obtaining of a point (that you know is utterly out of my power to yield), the indispensable condition of passing laws for the general administration of justice. \* \* \* \*  
 The law of attachments in every other colony, so far as I have been able to inform myself, makes no part of the general plan for the distribution of justice. \* \* \* Because it has been for a few short years woven into the temporary Court Laws here, it surely does not seem either necessary or expedient that it be still incorporated in those fundamental constitutions." He urged that some court system be established, however meagre, to save the colony from becoming the prey of rapine and violence.<sup>1</sup>

The Council in reply stated their position very clearly, viz.:—that if the attachment law contended for was of ever-so-great, acknowledged utility, they could see no reason, in order to obtain it, for abandoning all they possessed to rapine and disorder, and that they were ready to engraft into the establishment of courts the attachment law upon the terms proposed by His Majesty, or leave it hereafter to be modified when His Majesty's pleasure should be again signified.<sup>2</sup>

The House expressed itself in reply to the Governor's message in its usual bold and determined style. Their answer was: "We came to the last session of this Assembly fully possessed of the sentiments of our constituents; we have, however, appealed to them again, consulted them, and

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<sup>1</sup> C. R. Vol. IX, pp. 831-834.

<sup>2</sup> C. R. Vol. IX, p. 835.



stated to them candidly the point for which we contended; we have also informed them how far His Majesty is disposed to indulge our wishes \* \* \* We have the heartfelt satisfaction to inform your Excellency that they (the people) have expressed their warmest approbation of our past proceedings, and have given us positive instructions to persist in our endeavours to obtain the process of foreign attachments upon the most liberal and ample footing." They insisted further, that the other colonies had the privilege of attachment whether it was in their general system or not.<sup>1</sup> The House showed no signs of weakening in the position they had held throughout.

A committee of its best men was appointed to prepare a Court Bill. The bill was prepared according to the usual manner, and contained the forbidden attachment clause. The Council refused to pass it, and the two Houses exchanged several messages pointing out the reasons for their respective actions. After a long discussion the Council and the House were about to agree to an amendment, which did not affect the principle of foreign attachments, but only the wording of the clause, when the Governor sent copies of his instructions from the Crown to the Council, which forbade his acquiescence in measures of that nature.<sup>2</sup> He expressed the hope that the Council would find it inconsistent with their duty to the King to advise him to offend against instructions.<sup>3</sup> Nevertheless, on March 15 the Council, tired of its hopeless struggle, agreed to the House bill as amended, and the bill passed its last reading.

The Governor was now left alone. His long, faithful and subservient Council had deserted him. Both Houses then passed a resolution, without a dissenting voice, that they had pursued every useful measure to relieve the colony from its distressed condition. The Court Bill was presented to

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<sup>1</sup> C. R. Vol. IX, pp. 879-880.

<sup>2</sup> Martin: Hist. North Carolina, Vol. II, pp. 223, 224.

<sup>3</sup> Martin: Vol. II, p. 223.



the Governor for his signature, but in obedience to his royal master he withheld his consent.<sup>1</sup>

The Assembly continued their deliberation, and came to an agreement on bills for establishing Inferior Courts of Pleas and Quarter Sessions in each county, and Courts of Oyer and Terminer and General Gaol Delivery, but the jurors for the latter were to be selected by the Inferior Court.<sup>2</sup> These separate bills were presented to the Governor for his signature. Despairing of any better system, though fearful of incurring the ill-will of the King, Governor Martin gave his consent.<sup>3</sup> These two courts were very inefficient for the due administration of justice. The Inferior Courts were limited in jurisdiction to twenty pounds, affording the people no recourse for larger amounts.<sup>4</sup> The Criminal Courts were made dependent upon them.<sup>5</sup> The Superior Courts had exercised the control over the collection of the royal revenues, but now their collection was left to depend upon the collectors only.<sup>6</sup> Governor Martin called it a "new-fangled and inadequate plan," that would soon discover its own nakedness and induce the adoption of a better.<sup>7</sup> He prorogued the Assembly on March 25 till May 25, 1774.<sup>8</sup>

The Inferior Courts and Courts of Oyer and Terminer went into operation. The Courts of Oyer and Terminer, the last hope of the royal judges of North Carolina, were to meet an untimely end. While a Court of Oyer and Terminer was in session at Wilmington, Maurice Moore, who had lately been judge, objected to the commission of the court on the ground that the provincial law which created the court gave to the Chief Justice the powers of Oyer and Terminer and *General Gaol Delivery*, but the clause which empowered associates to act in his absence gave them only

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<sup>1</sup> C. R. Vol. IX, p. 862; Martin: Vol. II, p. 325.

<sup>2</sup> C. R. Vol. IX, p. 945.

<sup>3</sup> C. R. Vol. IX, p. 946.

<sup>4</sup> C. R. Vol. IX, pp. 947, 1009.

<sup>5</sup> C. R. Vol. IX, pp. 947, 1009.

<sup>6</sup> C. R. Vol. IX, p. 947.

<sup>7</sup> C. R. Vol. IX, p. 966.

<sup>8</sup> C. R. Vol. IX, p. 950.

powers of Oyer and Terminer, and not *Gaol Delivery*, and that, therefore, the Governor had exceeded his power in granting to the associates the Commission for Gaol Delivery; and also that the commission was to try for the "district of Wilmington," when no such district was known to law. The associates sustained Moore's contentions and adjourned. The commission was so full of defects that they seemed intentional. These blunders and defects were charged to the Assembly.<sup>1</sup> The Chief Justice, Howard, was very unpopular in the province. He came to the province from Rhode Island, where he bore a very unsavory reputation. There was little inclination to place much power into his hands.<sup>2</sup>

It had been the expressed intention of Governor Martin to meet the Assembly in May, 1774, but considering the unruly character of its members, he decided that it was useless to summons such an Assembly. The intention of the Governor not to call the Assembly together as usual in the fall soon became known throughout the colony. As early as April, 1774, we find John Harvey, the Speaker, in a "violent mood" because it was reported that Governor Martin had said that he would not call another session of the Assembly till there was some chance of a better one than the last. John Harvey also declared that he was for assembling a convention independent of the Governor, and that he would lead the way and issue hand-bills under his own name.<sup>3</sup>

During the summer a feeling was growing that the cause of one colony was the cause of all. Hooper wrote, on April 26, 1774, that the colonies were striding fast toward independence, and ere long would build an empire upon the ruins of Great Britain.<sup>4</sup> A vessel loaded with provisions was sent by the people of the Cape Fear country to the suffering citizens of Boston.<sup>5</sup> The failure of Governor Martin to call together the Assembly closed up this avenue for an expres-

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<sup>1</sup> Life of Iredell, Vol. I, p. 201.      <sup>2</sup> Jones: p. 99.

<sup>3</sup> Jones: p. 124.      <sup>4</sup> Life of Iredell, Vol. I, p. 197.

<sup>5</sup> Life of Iredell, Vol. I, p. 201.

sion of the feelings of the province, but others were created to take its place.

The freeholders of various counties met and proceeded to elect deputies to represent them at the Provincial Congress which John Harvey had called to meet at New Berne on August 25, 1774.<sup>1</sup> These freeholders declared that as the Constitutional Assembly for the colony was prevented from exercising their rights of providing for the security of the liberties of the people, that right again reverted to the people as the foundation from which all power and legislation flowed.<sup>2</sup> The people were alarmed and dissatisfied. There were no courts of justice sufficient to sustain property. The legal profession was left without practice, and hence more readily embraced the principles of the Revolution and became its leaders in North Carolina.<sup>3</sup> Governor Martin had issued his proclamation August 13, complaining of these meetings of the freeholders, which had been held without authority, and in which plans had been entered into derogatory of the King and of Parliament. Governor Martin, by his refusal to summon the assembly, closed up the legitimate avenue of legislation, but at the same time he awakened to increased activity the county committees which had been appointed in the previous year for the purpose of inquiry and correspondence.<sup>4</sup> These committees swore allegiance to the King, but they also swore they would maintain their rights against a wicked ministry, and never become the slaves of any power on earth.<sup>5</sup> The Governor's

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<sup>1</sup> Wheeler: Vol. I, p. 64. <sup>2</sup> C. R. Vol. IX, p. 1030. <sup>3</sup> Jones: p. 124.

<sup>4</sup> These committees were instructed to obtain the earliest information of Parliamentary Acts relating to the American colonies and to investigate on what authority the Court of Inquiry in Rhode Island sent persons beyond the seas to be tried for offenses committed in America. The same Assembly sent a circular letter to all the colonies thanking them for the patriotic stand taken in defense of their country's rights.

<sup>5</sup> They appointed patrollers to watch suspected persons, to disarm the slaves and sell the arms at public auction, the proceeds to go to the Church. C. R. Vol. X, 63. They observed the 20th July as a fast

proclamation did not deter them from assembling. They felt that the right to assemble together could be taken away from them by no magisterial mandate. All during the summer of 1774 they were holding their meetings, and when Harvey summoned the meeting of the deputies they proceeded to elect them.

The first Provincial Congress assembled at New Berne, August 25, 1774, despite the threats and proclamations of the Governor. The sessions were held almost in his very presence, but no attempt was made to disturb the meeting.<sup>1</sup> This Congress clearly set forth the issues between the government and the province, and declared its position.<sup>2</sup> The Continental Congress was approved, and Hooper,<sup>3</sup> Hewes and Caswell elected delegates. The Congress instructed its delegates to maintain a firm and resolute defense of person and property against all unconstitutional encroachments. It also agreed to abide by the action of a Continental Congress, and to have nothing to do with any person who would not do likewise. Having elected their delegates to the Continental Congress, the deputies arranged for another meeting,

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day and had a sermon on some appropriate subject. Rev. Mr. Reed refused to preach, and so one of the committee delivered an address. Reed was suspended. C. R. Vol. X, 116.

<sup>1</sup> Martin called together his Council to consult on what were the best steps to be taken. The Council replied "Nothing can be done." C. R. Vol. IX, p. 1041 *et seq.*

<sup>2</sup> They declared allegiance to the House of Hanover, and also that the conduct of Parliament forced them to declare their sentiments lest silence should be construed to mean submission, that no person should be taxed without legal representatives. They approved the course of the people of Boston and reprobated the Boston Port Bill, claimed trial by jury, joined the importation agreement and threatened to cease exportations.

<sup>3</sup> Mr. Hooper, despite the aspersions of Mr. Jefferson, in his declining years, was a prophet of the Revolution. On April 26, 1774, he wrote his friend, Iredell that the colonies were fast striding toward independence and ere long would build an empire on the ruins of Great Britain. He had studied law under James Otis. *Life of Iredell*, I, p. 197.



adjourned and returned to their homes to await the action of the Congress. North Carolina had now fallen into line with the other colonies, and her attention became absorbed in the affairs of the continent.

*Second Provincial Congress.*—The Continental Congress had recommended the meeting of another Congress to assemble in May, 1775. In order to elect delegates to this second Congress, John Harvey, who had been empowered to call another meeting of the deputies, summoned them to meet at New Berne in the month of April, at which time and place the General Assembly was also to meet. The meeting of a revolutionary body at the same time and place with the legitimate legislative body, and the probability that many persons would be members of both bodies, gave Governor Martin much annoyance. Governor Martin followed Harvey's advertisement by a proclamation which he thought would counteract its effect, but he had again misjudged the temper of the people whom he governed.<sup>1</sup> As was expected, most of the deputies were also members of the Legislature. Both bodies met on the same day, and John Harvey was made not only Speaker of the Assembly, but also President of the Congress of Deputies. This was a strange state of affairs. The Provincial Congress might be in session when the Governor's secretary would be announced, and then, Proteus-like, the Congress would change itself into the Legislative Assembly and proceed to dispatch public business.

Governor Martin's embarrassment may well be imagined. His address to the Assembly was full of instructions regarding unlawful Assemblies, and especially did it call upon the Assembly to resist that illegal body then in session in that town, saying that it was wounding to their dignity and setting up representatives derogatory to their just power and authority. The address was long and tedious; it was the final effort of a well-meaning Governor, who deeply felt his allegiance to his King, and who was trying by pacific means

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<sup>1</sup> Martin: 340.



to bring back the people to their proper allegiance as he conceived it. The House replied by declaring that they did not wish to interrupt the meeting of deputies then in session; that they approved the Continental Congress, and that the cause of Boston was the cause of all. The Governor saw how vain was his task, and dissolved the Assembly April 8, 1775, after a fruitless session of only four days.

The deputies now felt that they had become legislators, and that the internal welfare of the province rested in their hands. This body then took charge of the province, declared its policy, issued instructions for the guidance and conduct of county committees and re-elected the delegates to the Continental Congress. The deputies then adjourned, after having made arrangements for another meeting.

Governor Martin saw plainly that the tide was running against him, that pacific measures were no longer of any use, and that other means must be used. He collected a few old cannon that were scattered about the town, and placed them before the palace for the purpose of intimidating the people.<sup>1</sup> He also dispatched messengers to Cross Creek, where so many of the loyal Scotchmen lived. Other messengers were sent into the back counties to enlist the sympathy of those who had been engaged in the disturbance under Governor Tryon.

But vigilant eyes kept watch on every move of the Governor. Committee meetings were frequent in the counties and towns, while the militia turned out voluntarily to be trained, and furnished themselves with arms and ammunition. Governor Martin's course created much alarm. A letter from him to General Gage was intercepted. He wished a supply of arms, and expressed his opinion that many of the inhabitants had seen the error of their way. The town committee of New Berne still watched him closely, and at last interposed, seized and carried off from the palace six pieces of cannon, April, 1774.<sup>2</sup> Governor Martin, find-

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<sup>1</sup> Martin: 352.

<sup>2</sup> Gov. Martin says he left before this; that on election day, the mob, stimulated with liquor, carried off 6 pieces and attempted to break into the house. C. R. Vol. X, 49.

ing himself so closely watched that he could accomplish nothing, and deeming himself insecure, forsook his palace and went to Fort Johnson, on the Cape Fear, in May, 1775. Fort Johnson was situated just below the town of Wilmington. When the inhabitants of the town learned of Governor Martin's presence in the fort they were apprehensive that he might use the fort to distress the town, or make it a center for the gathering of the disaffected.

So great did the excitement become that the people assembled under John Ashe for the purpose of removing the artillery, but when they went to the fort it was too late, for Governor Martin, who had already gone on board the cruiser, had secured the arms and put them on board the ship. Under John Ashe, the people entered the fort and fired it, July 19.<sup>1</sup> The fort had already been dismantled, for the commander reported that there were not more than two or three men in the garrison on whom he could rely.

From his floating palace Governor Martin issued proclamations, but they were unheeded, and their circulation interfered with. Watchful committees still guarded the coast against his emissaries, who tried to make their way into the back counties.<sup>2</sup> His friends on shore were not allowed to visit him without the consent of the nearest committee. Royal authority was now a mere shadow. Everywhere committees exercised controlling power. The second Continental Congress was soon to meet and put an end to the long and obstinate disputes.

On June 26 the Continental Congress took under consideration the affairs of the province of North Carolina, and

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<sup>1</sup> Before attacking the Fort they sent an address to Governor Martin on board the cruiser preferring charges against Collet, commander of the fort, and declaring their intention of taking the fort, and keeping the cannon in good condition, till the King's service needed them. C. R. Vol. X, 103, 104, 188.

<sup>2</sup> It was rumored at one time that Governor Martin contemplated going into the back counties and among the Scotch and stirring up a civil war. Orders were issued by the committees for his arrest if he should attempt it. Rumors of intended insurrections instigated by Martin spread. C. R. X, pp. 124, 140.

advised the people to associate themselves for the protection of American liberty and to organize militia companies.

After the fight at Lexington, April 19, vague rumors filled the air of conflicts around Boston. The presence of Governor Martin in a man-of-war off the coast lent color to the suggestion of armed invasion and internal strife. Governor Martin saw his shadow of authority grow dim, and then in his wrath and fury he issued, August 8, his final proclamation, known as the "Fiery Proclamation," in which he surpassed himself in denouncing the people whom he could no longer govern.<sup>1</sup> The next Provincial Congress, August 20, replied to it by declaring it a scandalous, scurrilous, malicious, seditious libel, and ordered it to be burned by the common hangman.<sup>2</sup> Royal rule in North Carolina was at an end.

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<sup>1</sup> C. R. Vol. IX, p. 141.

<sup>2</sup> C. R. Vol. X, pp. 141, 180.

## THE PROVISIONAL GOVERNMENT.

After the flight of Governor Martin from the palace, in May, 1775, the people were impatient for the assembling of another Provincial Congress. Frequent petitions were sent up by the county committees to Samuel Johnston, asking him to call a meeting of the deputies.<sup>1</sup> The people had come to regard these Congresses as the province in action. Mr. Johnston had been requested by the last Congress to call another in case of the inability of venerable John Harvey to do so. Harvey having died, the duty fell upon Samuel Johnston. Johnston, however, was now in something of a dilemma. The Assembly was expected to meet in New Berne, July 12. Many members of the Assembly would probably be members of the new Congress. Since Johnston had power to call the Congress to meet at Hillsboro only, he postponed issuing the call till Governor Martin prorogued the Assembly till September 12.

Events were now following each other so rapidly that no sooner had one Congress adjourned than clamors arose for another. A county committee wanted to attack Fort Johnston, but feared that the Congress would not approve the act, and so they prayed Mr. Johnston to hasten his call, for they "hoped everything from an immediate session and feared all from its delay."<sup>2</sup> Other county committees were obtaining the subscriptions of persons who were ready to arm themselves against the English Government, and to submit to the control of committees. Rough means were sometimes used to secure the names on the list. Men were threatened with tar and feathers to induce them to submit to the au-

<sup>1</sup> C. R. Vol. X, pp. 66, 72, 74, 90.<sup>2</sup> C. R. Vol. X, p. 91.

thority of the committees. But the people were very much attached to the Crown. Loyalty to the reigning house was a virtue on which they prided themselves. To secure their adherence to the new government that was arising in the counties, the Crown was pictured as being at the "mercy of an evil-minded Parliament and a designing ministry." To counteract this influence Governor Martin issued a proclamation declaring Parliament and King to be in perfect harmony, and that the King had no idea of depriving any of the colonies of their charters.<sup>1</sup>

Governor Martin was aware of the restlessness that pervaded the province, and so he decided that it would be useless to call together the Assembly. Mr. Johnston, becoming acquainted with this fact, summoned the third Provincial Congress to meet at Hillsboro on Sunday, August 20, 1775.<sup>2</sup> There was wisdom in the selection of this place, it being situated in the very heart of the territory where the Regulators abounded. The former Congress had met at New Berne in the east, but this Congress was to meet in what was then considered the west. The preponderance of political power lay along the Atlantic seaboard. Such being the case, it was but natural for sectional jealousies to arise, but a meeting in Hillsboro was an excellent means of uniting the different sections of the province. The three representatives in the Continental Congress were taken from the east, but this convention, upon the resignation of Richard Caswell, selected as his successor John Penn, of Orange, a western county.

The condition of the province at this time was one of intense excitement. The delegates to the Continental Congress kept the committees informed of the state of affairs in Boston and in the other colonies, and continually urged the province not to lag behind. These delegates sent an address to the town and county committees, declaring to them that the "fate of Boston was the common fate of all," and that the other colonies were armed for defense. They urged

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<sup>1</sup> C. R. Vol. X, pp. 17, 18, 19.

<sup>2</sup> C. R. Vol. X, p. 88.



the committees to organize into a militia, to study the military art as the science upon which their future security depended.<sup>1</sup>

The news of the Battle of Lexington caused the formation of many associations in which men declared that they, feeling justified in the sight of God and man, would unite themselves into an association for the defense of their country, and would pledge their lives and fortunes to the Continental and Provincial Congresses. They also declared that Lord North's bill was "low, base and flagitious, a wicked attempt to enslave America," and that the ministry was profligate and abandoned.<sup>2</sup> The people throughout the province were thrilled with enthusiastic fervor.

The Congress met August 21, 1776. It was much larger than any previous meeting. In the summons which Johnston sent to each sheriff in the province he advised the selection of five delegates at least, but many counties sent more—even ten.<sup>3</sup> The first work of this body was the preparation of a test oath, which every one had to sign before taking part in the deliberations. This oath was declaratory of allegiance to the King of Great Britain, and an acknowledgment of the constitutional executive power of the government, but at the same time a denial of the right to tax without representation. The signers agreed to obey the Acts of the Continental and Provincial Congresses, for in them they

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<sup>1</sup> C. R. Vol. X, pp. 20-23. They advise to "preserve their ammunition as a sacred deposit, for he in part betrays his country who sports it away, perhaps in every charge he fires giving away the means of preserving a human life."

<sup>2</sup> In many places the local committees had usurped all power and begun preparations for war by purchasing and storing away powder and lead against sudden emergencies. These local committees were the hot-beds of the revolutionary movement. Their acts and resolutions were bold and vigorous. They had not learned to practice deception by voting flattering messages to the Crown.

<sup>3</sup> The total number of delegates assembled was one hundred and eighty four. Samuel Johnston was made president. C. R. Vol. X, 160 *et seq.*

declared they were fully represented. Every member present signed it. That every one was sincere can hardly be believed, but they had so often sworn allegiance to the King that it had become the proper formula to be used in all public meetings. No illegal or revolutionary body would think of proceeding to business without first swearing its deep devotion to and affection for the reigning house. Diplomacy requires all formal communications to be ceremonious and stately. At present, these men were fighting a diplomatic duel, and so were punctilious in their etiquette and self-restraint. This Congress regarded itself as possessed of plenipotentiary powers. Its acts were to bind the whole body of the people without consulting them. It recognized that important labors lay before it, for Royal Government in North Carolina had ceased.

To unite the various elements that constituted the people of the province was one great task. The inhabitants were of English, Scotch, French and German extraction, and many were settlers from other colonies. There were different political parties. Numbers of Scotch Highlanders had been pouring in, and as yet they had manifested no sympathy with the new movement. To secure the Scotch party would be a great gain. An enemy in the heart of the province was greatly to be dreaded. So the Congress appointed a committee, composed largely of Scotchmen, to visit these people and explain to them the character of the new movement, and what cause impelled them to take this course. But the work of the committee was in vain. The Scotch decided to remain neutral for the present. Many of them were Presbyterians, and ministers came down from Philadelphia to do missionary work among them on behalf of the American cause.<sup>1</sup>

Another important party was the Regulators. They had not chosen to cast their lot with the Congress. Some of them claimed to be bound by their recent oath of allegiance, while others remembered too well the fatal day at Alamance,

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<sup>1</sup> C. R. Vol. X, p. 173; Jones' Defense, 231.

and still feared the power of the English Government. Many of them cherished little love for the men who had crushed their own protest against illegal oppression, and from whose wounds they were still smarting. A committee was appointed to consult with the Regulators, but argument and persuasion were in vain. Resolutions were passed guaranteeing them against any punishment with which they might be threatened, but they feared even gifts from the hand which once had smitten them.<sup>1</sup>

There was another disaffected class, composed of those who did not believe that the movement would amount to anything. The county committees arrested many of these and brought them prisoners to the Congress that it might determine their fate. Many recanted and took the test.<sup>2</sup>

The creation of a new government was the most important duty devolving upon the Congress. It declared that inasmuch as the Governor continued to absent himself from the province without sufficient cause, and refused to exercise his power by retiring on board a man-of-war without any threats or violence to compel him to such measures,<sup>3</sup> it

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<sup>1</sup> On the committee of argument and persuasion were Richard Caswell, who had commanded troops at Alamance; Maurice Moore, who had adjudged several of their number guilty of treason and condemned them to death; and Rev. Mr. Patillo, who had preached against their cause. To forget these things was too great a task. Many of the Regulators had left North Carolina and gone into the wilds beyond the mountains. Here they made their homes and followed their frontier leaders. Governor Martin thought that both the Regulators and the Scotch would remain neutral. C. R. Vol. X, p. 266. Bassett's Regulators in North Carolina.

<sup>2</sup> C. R. Vol. X, pp. 160, 182. Thanks were voted to the "Gentlemen Volunteers of Anson" who brought persons in their custody to the Congress.

<sup>3</sup> Gov. Martin wrote June 30th that the government of the King was impotent. "I daily see, indignantly, the sacred majesty of my royal master insulted," he said, "the rights of his crown denied and violated, his government set at naught and trampled upon, his servants of highest dignity reviled, traduced and abused, and the whole constitution unhinged and prostrate, and I live, alas, ingloriously only to deplore it." C. R. Vol. X, p. 47.

was necessary to create a civil government. To the Governor these words must have seemed ironical. These men did not desire to form a permanent government. There was still hope of reconciliation. But some kind of government was necessary, since for months each county committee had done that which was right in its own sight. There was danger of anarchy.

The form which the new government took was in great part determined by the existing condition. The most active forces in the province were the local committees in each county. They would not readily yield up their newly-won power. The question was how to steal away the power from these committees and place it in fewer and more conservative hands. It was useless to think of a sudden change, so it was decided to form a government consisting of committees, but with the local committees subordinated.<sup>1</sup> Two superior committees were established, a Provincial Council and six District Committees of Safety.

*The Provincial Council* was to consist of thirteen (13) members, two from each of the six districts in the province, and one from the province at large. The Congress was to elect them upon the recommendation of the deputies from each district. Its powers were specified in some particulars, but full executive and administrative power was given it. It might do nothing contrary to a resolution of the Congress. While the Congress was not in session it was to be the supreme power. The control of military affairs was placed in its hands.<sup>2</sup> It also controlled the public funds, but was

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<sup>1</sup> On August 24th, 1776, the Congress appointed a committee of forty-six to prepare a plan of civil government for the regulation of internal peace and order, and for the safety of the province. The resolutions appointing the committee defined the subjects on which it was to report. The general plan was thus recommended by the Congress, while the details were arranged by the committee. Mac-laine was chairman. C. R. Vol. X, pp. 175, 193.

<sup>2</sup> These were such as certifying to the appointment of officers, filling up vacancies, granting certificates of election, vetoing the selection of officers, suspending officers, ordering court-martials, calling out the militia, and enforcing the acts of the Congress. C. R. Vol. X, p. 209.



enjoined to keep strict account of all expenditures and present it to the Congress. It was to hold quarterly meetings, and oftener, if deemed necessary, and to choose its own place of meeting. The salaries of the members were to be ten shillings per day and ferriage. In case of vacancy, the Committee of Safety in the district where the vacancy occurred was to elect a proper person. No person holding a military position or a lucrative office under a commander was capable of acting as a member of this Council.<sup>1</sup>

*The Six District Committees of Safety*<sup>2</sup> were intimately connected with the Provincial Council. They consisted of a president and twelve members each, and were to sit every three months, and oftener, if deemed necessary, at the principal towns in their respective districts. It had been the custom in some parts of the province for several counties to hold a general meeting, so the creation of the district committee was only a continuation of what already prevailed. Under the control of the Provincial Council they were to direct the movements of the militia and such other forces as might be employed in their respective districts. They were to receive information and punish delinquents in the first instance, or to act as a superintending power over the town and county committees. Members of this committee were elected by the delegates from their respective districts in the Congress, but the election was sanctioned by the Congress.

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<sup>1</sup> The first Council was composed of Samuel Johnston, Cornelius Harnett, Samuel Ashe, Thomas Jones, Whitmill Hill, Abner Nash, James Coor, Thomas Person, John Kinchen, Willie Jones, Thomas Eaton, Samuel Spencer, and Waightsill Avery. Gov. Martin said that in the first Council were no less than seven lawyers, all of whom were infamous and contemptible, except Samuel Ashe and Samuel Johnston, and that among the others there were none of good character and some were contemptible to the last degree. The Council selected its own president at its first meeting. Cornelius Harnett was chosen. The Council might call a meeting of the Congress before the regular time for special reasons. Two members of this Council were necessary to the organization of the Congress. The Council endured only from Congress to Congress. C. R. Vol. X, pp. 212, 269.

<sup>2</sup> C. R. Vol. X, p. 208 *et seq.*



The members were not allowed to hold any position in the army or any lucrative office under any commander.<sup>1</sup>

*Town and County Committees.*—Edenton, New Berne and Wilmington were the most important towns in the province. The Congress ordered each of these towns to elect a committee consisting of fifteen persons, also every town possessing the right of representation in the Congress was to have a committee of seven. All persons having the right to vote for representatives might vote for a committeeman. The county committees were to consist of twenty-one members. These committees were to meet on the first day of their county courts, and as often and at such places as they pleased besides. Town and county committees might meet together.<sup>2</sup>

When the people of the counties met to choose these committees, great interest was taken in the elections. It was very necessary that there should be unanimity. In the old County of Bute (now Warren and Franklin), recourse was had to a primitive custom. Kinship was made the basis of the organization; one member was selected from each kin. In later years it was a current saying that "there were no Tories in Bute."<sup>3</sup> The Tryon committee was selected on the military basis, two from each company.<sup>4</sup> The committees had frequent meetings. They were typical of vigilant

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<sup>1</sup> The districts were Wilmington, Newbern, Edenton, Halifax, Hillsboro and Salisbury. The present Congress chose these committees at once. C. R. Vol. X, pp. 214, 215.

<sup>2</sup> These county committees had been first appointed at the request of the Provincial Congress of October, 1774. It was then recommended that five persons compose the committee, but so enthusiastic were the citizens or so anxious were they to be members of it that much larger numbers were appointed. In some counties there were a hundred members. This was designed to enlist the active sympathy of a large body of citizens. Patronage was used and won adherents. C. R. Vol. X, p. 37.

<sup>3</sup> Jones' Defense, 203.

<sup>4</sup> These committees were to elect a Committee of Observation and Secrecy, consisting of seven members, who might arrest suspects and hold them for trial.

committees, had little regard for courts of law, and administered justice in such rough and ready manner as suited them best. They executed the orders of the Provincial Council, it is true, but more often they acted on their own responsibility. Suspected persons were arrested and examined; many lawless acts were committed by them; the outrages of internecine war were encouraged, and tar and feathers often characterized their work. The Provincial Congress had forbidden them the infliction of corporal punishment, but they acted as if they were a law unto themselves. There is no doubt but that they helped the wavering Whig or reluctant Tory to the formation of his political creed, and in the civil war that was soon to break out they took an active part. Yet these petty Parliaments conducted their deliberations with dignity and decorum, and adopted a system of Parliamentary procedure.<sup>1</sup>

*Suffrage.*—Suffrage under the Royal Government had been granted to the inhabitants, but now it was restricted to freeholders except for persons residing on certain lands<sup>2</sup> of Lord Granville, where a "householder" with improved land in possession was given the privilege. The result of this enactment was the disfranchisement of many Scotchmen whose loyalty to the King was still unshaken. This gave the Whig party control of the machinery of government in those counties where the Scotch were in the majority. Though this was at the time probably the object of the limitation, yet it must be borne in mind that the extension of the suffrage was no part of democracy as then understood. Governor Dobbs's administration in 1760 was criticised because it favored the extension of the electoral franchise. Royalty was thus more favorable to universal suffrage than was the new government.

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<sup>1</sup> C. R. Vol. X, pp. 186, 191-204.

<sup>2</sup> These lands were the counties of Bute, Wake, Granville, Chat-ham, Orange, Guilford, Rowan, Surrey and part of Mecklenburg. Jones' Defense, 202.

*Military Organization of the Province.*—After recounting the dangerous and critical condition to which they had been reduced by the British ministry, and the threatening attitude of Governor Martin, the Congress determined to put the colony in a state of defense “for the sole and express purpose of security.” Meditated resistance required military preparations. It was thought at least that an armed peace was safest. So on September 1, 1775, Congress voted to raise at once two regiments, consisting of 1000 men each, for the Continental establishment. Washington was already at Cambridge drilling the raw recruits from the American woods. Colonels Howe and Moore were placed in command of these two Continental battalions. The next spring four more battalions were added.

*Minute Men.*—The six judicial districts of the province were also made military districts. A battalion, consisting of ten companies, fifty men each, was to be raised in each district. These were the minute men of the province. The first officer in each district was to appoint persons in each county to enlist them, and when the companies were organized they were to select their own captain, lieutenant and ensigns, and they were to appoint the non-commissioned officers. To be accepted, these companies had to appear before the county committees.<sup>1</sup>

*Militia.*—It was determined to organize the militia of the province in every county. The field-officers were to be appointed by the Congress, and the captains, lieutenants and ensigns by the county committees, but the commissions for the latter were to issue from the Provincial Council. This bestowal of the veto power of the Council was for the purpose of thwarting the designs of those counties where the Tory element was in the ascendancy. In certain counties, where it predominated, the officers elected might be Tories. These companies were to meet once a month for muster.

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<sup>1</sup> A bounty of twenty-five shillings was allowed to every private and non-commissioned officer to buy him a uniform, consisting of a “hunting-shirt, leggins, or splatter-dashes, and black garters.”

They were intended to be under the control of the District Committee of Safety.

*Volunteer Companies.*<sup>1</sup>—In addition to the regularly constituted military forces of the province, there were voluntary companies throughout the province, which were subject to the county committees. Thus, in September, 1775, the province was thoroughly organized. Military officers were appointed and thorough discipline instituted.<sup>2</sup>

*Revenue.*—In order to defray the expenses of this military establishment, it was ordered that there be issued, on the faith of the province, a sum not exceeding £125,000. For the redemption of these bills a poll-tax of three shillings was appointed to commence in 1777, and continue for nine years.<sup>3</sup>

*Encouragement of Manufactures.*<sup>4</sup>—This Hillsboro Congress knew that open hostilities would interfere with foreign commerce. The province at this time ranked fourth in the confederation.<sup>5</sup> The closing of the ports by the more powerful English navy would bring misery upon many; there would be no market for products; there would be suffering

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<sup>1</sup> Jones, 340; C. R. Vol. X, p. 215.

<sup>2</sup> Each inhabitant of the province was advised to get a "bayonet for his gun and be ready to turn out at a moment's notice." C. R. Vol. X, 215.

<sup>3</sup> For counterfeiting, the usual heavy penalties were attached—death as a felon without benefit of clergy. Whoever should refuse to take these bills was to be regarded as an enemy to his country. To speak disrespectfully of them was to declare one's self an enemy of the cause. Strict guarantees were made to secure the circulation of this currency. Efforts were made to procure arms from other provinces and also to bring all private arms into the public service. Captains were ordered to borrow guns, giving certificates describing them and their value, that the owners might afterward receive pay for them. Many guns were rented per annum. There were willing hands on every side. Warlike preparations were to be seen from the coast to the mountains. The Provincial Council now was rarely called upon to settle civil suits, but frequently granted commissions and instruments of war. C. R. Vol. X, pp. 193-195.

<sup>4</sup> C. R. Vol. X, 216-219. Pref. Notes IV.

<sup>5</sup> C. R. Vol. X, p. 271.



for the want of the daily necessities of life. In this way the province might be subdued, for bitter suffering would accompany the taste of freedom. To guard against this danger Congress offered bounties for the production of saltpetre, gunpowder, nails, salt, sulphur, iron and other manufactured products.<sup>1</sup> Throughout the province were seen efforts to make it self-supporting and independent of the outside world. Even before the Congress adjourned application was made for the bounty on linen.<sup>2</sup>

Franklin's plan of confederation was discussed at this Congress. Hooper had come down from Philadelphia, and felt that all hope of honorable reconciliation was impossible, and that the only thing to be done was to maintain a united resistance to the last. The Continental Congress had not recommended the plan, but only desired an expression of the opinion of the delegates. After studying and discussing the proposed plan, the Congress decided that it was not suitable for present purposes, and expressed their willingness to rely on the association recommended by the Continental Congress. Not only was the Franklin plan refused, but the Continental delegates were instructed to vote for no plan of confederation before consulting the Provincial Congress. The Congress declared its willingness to pay a proportional part in the support of a Continental army. To aid in this, local committees were ordered to make a census of the inhabitants in their respective districts.<sup>3</sup>

A loyal address directed to the inhabitants of Great Britain was prepared. The colonists were aware of the sympathy of London with the Americans, and had read the peti-

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<sup>1</sup> For every One Hundred-weight Saltpetre, .25; for every Five Hundred-weight Gunpowder, \$2.00; for first Rolling and Slitting Mill for preparation of Iron for Nail-making, \$2.50; for first pair Cotton Cards, .50; for first pair Woollen Cards, .50; for first 25 doz. Pins, .50; for first 25,000 Needles, .50; for first Steel Furnace, \$1.00; for first Paper Mill, \$2.50; for first 25 yds. Best Linen, .50; for first Best Woollen Cloth, \$1.00; Salt works on Seashore, \$7.50; first Furnace for Pig iron and Hollow iron, \$5.00.

<sup>2</sup> C. R. Vol. X, p. 271.      <sup>3</sup> C. R. Vol. X, pp. 176, 192.



tion declaring abhorrence at the measures pursued against them.<sup>1</sup> The address written by William Hooper was adopted, and received an extensive circulation; it disavowed any desire for independence or separation, and declared the devotion of the province to the House of Hanover. It even consented to the injurious regulations of trade, and asked only to be restored to the condition prior to 1763. The address was prepared under the watchful eye of a committee, and the wording was so careful that even a Highlander might sign it and still remain faithful to his King. It showed that the colonists, though in the midst of preparing for armed resistance, and daily committing treasonable acts that drove Governor Martin into an hysterical frenzy, were yet willing and anxious for peaceful settlement. The address was made not to King, Ministry or Parliament, but to the people of the British Empire, and shows the strong feeling of brotherhood with which the colonists were imbued. It was the voice of friend and fellow-citizen speaking to friend and fellow-citizen, and it declared that the happiness of the whole British Empire was the purpose of this contention. But the battle for the salvation of the rights of Englishmen was to be fought on American soil.<sup>2</sup>

The new government went into operation at once. There was no friction, for it was simply the adaptation of what already existed. The principles of the new government had been growing in the province for a year previously. The new Council held its first meeting October 8.<sup>3</sup> Cornelius Harnett, whom Josiah Quincy called the Samuel Adams of North Carolina, was elected to the perilous position of president. Harnett was now virtually Governor of North Carolina. He was no temporizer, and at once began to prepare the province for war. The Council issued one address after another. Close watch was kept on Governor Martin in his "floating palace" on the Cape Fear. The apprehension of

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<sup>1</sup> C. R. Vol. X, p. 59.

<sup>2</sup> C. R. Vol. X, Proc. 2nd Provincial Congress.

<sup>3</sup> C. R. Vol. X, Proc. Provincial Council.

the disaffected and their imprisonment busied the Council. It was the executive of the acts of the last Congress, and of its own determinations. It appointed commissioners to confer with like commissioners from Virginia and South Carolina for united resistance, and decided to disarm all suspected persons, ordering the county committees to perform this task. Here was an occasion for the display of personal daring and chivalry, but it arrayed neighbor against neighbor.<sup>1</sup>

*Uprising of the Scotch Royalists.*<sup>2</sup>—The region of the Cape Fear from its mouth, below Wilmington, to its headwaters in the back counties, was largely inhabited by Scotchmen.<sup>3</sup> The majority of these Scotchmen possessed little property. Many of them were merchants, and erected their neighborhood stores far in the interior. Among them, however, were some persons of prominence and wealth. These people had been treated very kindly in North Carolina, but Governor Martin had been their special friend. Many had come to these wilds as to an asylum of rest. They had opposed the English Government and suffered for it at Cul-loden; they now preferred to spend their days in peace. But no sooner had they become settled in their new abodes than the trouble began to brood between their neighbors and the government of Great Britain. Here an opportunity was offered for them to show their devotion to the House of Hanover, as they had once before shown it to the ill-fated Stuart. They had too recently felt the hand of British power to hasten into opposition against it in this country. They knew little of the grievances under which the colonies labored.

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<sup>1</sup>The Council held its first meeting at Johnston Court House Oct. 18-22; the second meeting at the same place Dec. 18-24; and the third meeting at Newbern Feb. 28-March 5, 1776, where it summoned a meeting of the Provincial Congress at Halifax, April, 1776.

<sup>2</sup>C. R. pp. 444, 452, 465.

<sup>3</sup>Here lived the famous Flora McDonald whose heroic spirit had been shown in her devotion to the Stuart Pretender.

The emissaries of Governor Martin had been among them and filled their minds with horror of a "most unnatural rebellion." Governor Martin confidently depended upon their loyalty. He wrote letters to the ministry declaring the devotion of these people and the Regulators, and promising that the province, when threatened seriously, would largely remain faithful to the English. He believed that so many had been coerced into the new Whig party in the province that the whole movement would fall at the first appearance of danger. These letters induced the ministry early in the year 1776 to plan a grand invasion of North Carolina from different quarters. Lord Dunmore was to threaten the province on the Virginia side. In the Cape Fear region was Governor Martin, who was to be joined by Cornwallis, Clinton and Campbell. The attack was to be completed by the march of the loyalist army of Scotch Tories and Regulators from the back counties to join the other troops.<sup>1</sup> The object of the invasion was to separate the southern colonies from the others, and the Scotch loyalists were to be the wedge that should rend them asunder. Governor Martin declared that in this way the rebellion would soon die in the South. With a hostile foe on the north, with British troops and fleet on the east, with Indians on the west, and Tories in the heart of the province, the new government was to be put to the test of its powers early in 1776.

In January, 1776, Governor Martin issued commissions to certain Scotchmen and others to organize this class and march down the river to Wilmington by February 15.<sup>2</sup> A meeting of these newly-commissioned officers was held at Cross Creek, now Fayetteville, on February 5.<sup>3</sup> The trustworthy Scots opposed the uprising at that moment. They deemed it wise to wait till the British fleet appeared. Other council, however, prevailed.<sup>4</sup> Collecting the Highlanders

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<sup>1</sup> C. R. Vol. X, p. 46, Martin's Plan proposed to Ministry Jan. 3rd, 1775.

<sup>2</sup> C. R. Vol. X, pp. 441-444.

<sup>3</sup> Among the Highlanders were men on half pay in the British Army.

<sup>4</sup> Bancroft, IV, p. 387.

and a remnant of the Regulators, the aged Donald MacDonald, who had fought on the field of Culloden, began his march down to the sea on February 18. But men were ready to meet him, and they informed him that they had determined to hazard everything in defense of the rights of mankind.

There were minute men, militia and volunteer rangers, all watching his course, and all determined that he should not form a junction with the British fleet then expected at the mouth of the Cape Fear. As the two armies drew nearer together, MacDonald saw the imminent danger with which he was threatened, of being cut off from Wilmington. He told the troops that if there were any so faint-hearted as not to serve with the resolution of conquering or dying, they might then declare themselves. The Scots answered with a huzza for the King, but some twenty others laid down their arms and returned home.

On the morning of February 27, 1776, MacDonald's troops came to Moore's Creek, within twenty miles of Wilmington. The campaign had extended along the Cape Fear for fifty miles, and there had been no serious encounter. But the Carolinians now had them in a place where fighting was necessary. They took their stand on the opposite side of the creek, after having removed everything from the bridge except two logs, which served as sleepers. The Scots rushed forward, but the leaders, McLeod and Campbell, both fell, and in a few moments the assailants fled in irretrievable disaster. The victory was complete, the Tories dispirited, and many of them captured. Governor Martin's great dependency for subduing the province had vanished. On April 18 the fleet under Sir Peter Parker appeared, but it was too late. The plans of the invasion had been completely frustrated. The British fleet came and remained at the mouth of the Cape Fear till June 1, 1776. General Clinton, who was in command of the troops, did not think it



wise to invade the province.<sup>1</sup> Clinton's headquarters were so closely watched that the land forces did not land except to ravage Gen. Robert Howe's plantation.<sup>2</sup> The fear of the armed men who lined the coast, and distrust of Governor Martin's ability to conduct a campaign in the interior, caused General Clinton to sail to Charleston, and the danger of an invasion passed away.<sup>3</sup>

The effect of the battle of Moore's Creek was to dispirit the Tories and encourage the Whigs. What Lexington was to New England, Moore's Creek was to North Carolina. Almost every man was now ready to turn out at a moment's warning. The people had crushed domestic insurrection and repelled a threatened invasion. Too much stress has not been laid on the effects of the battle at Moore's Creek. Had the Whigs been defeated at this time, the plans of the ministry would have succeeded and the colonists would have been separated.<sup>4</sup> The victorious Whigs now felt the enthusiasm consequent on victory; blood had now been spilt, and there was no turning back. The bitterness between the two parties in the province was now intense, and many lawless acts were committed in the name of American liberty, but the Tory power was so broken that it never dared to raise its head again except when a British army was near.<sup>5</sup>

*The Fourth Provincial Congress* met at Halifax April 4,

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<sup>1</sup> He had been on board the man-of-war with Governor Martin long enough to know the spirit of the people and to learn how well the Provincial Council had prepared the province for war.

<sup>2</sup> On May 12th nine hundred troops landed, ravaged the estate, and advanced to Ostin's Mill to secure certain military stores, but the stores had already been moved to a place of safety. The buildings were fired and the two generals returned triumphantly to the fleet, having captured "three horses and two cows." Jones, p. 261; Martin, II, 390, 391.

<sup>3</sup> The whole royal force under Sir Peter Parker comprised thirty-six vessels.

<sup>4</sup> Bassett's Regulators in North Carolina.

<sup>5</sup> "As they marched in triumph through their piney groves they were persuaded that in their own forests they could win an easy victory over British Regulars." Bancroft, IV, p. 390.



1776. The men who attended were "all up for independence."<sup>1</sup> Four days after the opening of the session a special committee was appointed to take into consideration the usurpations and violence of the King of Great Britain.<sup>2</sup> That uncompromising Whig, Cornelius Harnett, was made chairman.<sup>3</sup> On April 12 Harnett's committee made their report. The report, after reciting the abuses of the government and declaring that the moderation of the united colonies and their sincere desire to be reconciled on constitutional principles had brought no mitigation, and that as there was no longer any hope in these means, recommended to the Congress to empower their delegates in the Continental Congress to concur with delegates from the other colonies in declaring independence and forming foreign alliances.<sup>4</sup> Congress adopted the report unanimously. This was the first vote in America giving explicit sanction to independence.<sup>5</sup> Some of the colonies were loathe to separate from the English Government for fear of losing satisfactory internal governments. This was not the case in this colony. The distractions of internal administration had so alienated its affections that it was not loathe to part with the system. But the colonists were jealous of weaving their internal governments with those of the other colonies. This province specifically reserved to itself the power of making its own laws and establishing its own form of government.

Having taken this bold and progressive step, having now

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<sup>1</sup> Johnston to Iredell, Iredell, I.

<sup>2</sup> This Committee consisted of Harnett, Allan Jones, Burke, Nash, Kinchen, Person and Th. Jones.

<sup>3</sup> He and Howe were the only persons excepted in the general pardon offered in Governor Martin's proclamation.

<sup>4</sup> Samuel Johnston wrote Jas. Iredell in April 13, that in consequence of some important news received the night before, the Congress had impowered their delegates to take the above steps. This may have been some movement of Gen. Clinton's or news from the fleet on its way to the Carolinas. The delegates to the Continental Congress wrote as if they had despaired of reconciliation. C. R. Vol. X, 1032.

<sup>5</sup> Bancroft, IV, p. 390.

severed all connection with the British Government, the Congress proceeded to consider the formation of a permanent form of government. On April 13 a committee was appointed to prepare a "temporary Civil Constitution."<sup>1</sup> How to put into operation the new machinery that had come into their hands was more difficult than to obtain it. These men knew the principles on which the English Government was founded; they were well grounded in fundamentals, but there was a marked lack of unity in administrative ideas. It had been very easy to declaim about self-government and the rights of Englishmen, but when it came to the preparation of measures for their security, there was an evident lack of confidence. Their ideas were not yet crystallized. Many projects were proposed, day after day the matter was discussed and postponed. At this time there were no State Constitutions to furnish them with models.<sup>3</sup> There were provisional governments, but the Continental Congress had not yet advised the creation of State governments.<sup>4</sup>

On April 25 the committee reported the mere outlines of a form of government. This plan was that there should be an executive council, consisting of a president and six councillors, to be always sitting; a legislative council, composed of one member from each county, to be an upper house, and a house of representatives chosen from the people.<sup>5</sup>

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<sup>1</sup> The members were: Samuel Johnston, Nash, Harnett, Th. Jones, Green, Hill, Burke, Allan Jones, Locke, Blount, Rand, John Johnston, Ashe, Kinchen, Spencer, Haywood, Richardson, Bradford, Ramsay, and Th. Person.

<sup>2</sup> C. R. Vol. X, p. 1037.

<sup>3</sup> South Carolina had adopted a constitution, but it was of little service to them. Connecticut had renewed her old charter of 1662, and some delegates favored using this as a model.

<sup>4</sup> This measure was not passed until May 10th, 1776. North Carolina had not waited for these instructions, as Bancroft and von Holst seem to think. (Bancroft: Vol. II, p. 344; von Holst: Vol. I.)

<sup>5</sup> For the legislative councilmen none but freeholders might vote; for members of the house only householders of one year standing. Our information on this plan is found only in letters, since no record was kept of the discussion. (C. R. Vol. X, 1034.)

The discussion of this plan produced the first schism in the ranks of the new party; it marked out party lines which were to prevail in later years. There had been harmony and unity, but there now came into being two parties, radicals and conservatives. The conservative party wished to put a check on the representatives of the people to prevent them from assuming more power than was consistent with the liberties of the people, but the radical party maintained that annual elections were a sufficient guarantee. Samuel Johnston strongly opposed the new plan, which he thought very bad. The difference of opinion between members became sharp and bitter. They had not met for the purpose of framing a Constitution, and they neither knew what the people desired nor what was best for them to have. But affairs suddenly took a change. The Congress, after a discussion of some days, postponed the consideration of the plan to April 29, on which day the committee was discharged and a new one appointed to form a temporary government to subsist until the close of the next Provincial Congress.<sup>1</sup> There were several reasons why the matter should have been postponed. In the Cape Fear river were 2000 troops, and 5000 more were expected.<sup>2</sup> It was not a suitable time to institute a new policy. Besides, many of the most influential members opposed the plan, and it was not well at this moment to lose their aid. Whatever the cause of the postponement may have been, a wise conservatism prevailed, and common sense triumphed over the tyranny of the majority.

This new temporary government which was created consisted of committees, but the Provincial Council and the six District Committees of Safety were abolished, and in their stead was substituted a Council of Safety for the entire State. The county committees remained as formerly. This system was superior to the old. The Provincial Council had met

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<sup>1</sup> This new committee was composed of Burke, Howe, Ashe, Caswell, Hooper, Person, Nash, Kinchen, Th. Jones, and Coor.

<sup>2</sup> C. R. Vol. X, p. 1038.

only at intervals, generally every two months, but the Council of Safety was made a permanent body continuously in session. The change was one of administration only. The experience of the last few months and the present condition of the province recommended these changes. A permanent body is more influential than an occasional body, and is better qualified for the management of military affairs.

The District Committees of Safety, if judged by existing evidence, had not been active organizations. The local committees were so active that there was little left for the district committees to do. Complaint was made that they were not attending to any business, and the Provincial Council ordered them to meet and transact the public business. It was more convenient and more satisfactory for the county committee to confer directly with the central committee. Such being the case, there was no need for district committees.<sup>1</sup>

The Council of Safety had no fixed place of meeting; it went from one part of the State to another.<sup>2</sup> From the establishment of this permanent council the county committees declined in importance. The determinations of the Council were generally executed by some one delegated by it; it became the supreme power in the State, and almost the

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<sup>1</sup> It has been maintained that this change was simply a piece of partisan politics to get rid of Samuel Johnston, a member of the Provincial Council, who had made himself very offensive to the extreme radicals. Mr. Johnston was not elected a member of the new Council, but he did not complain. This same Congress had elected him president against his will, and at its close had voted him thanks as having proved himself a true and firm patron of liberty, a wise and zealous friend and assertor of the rights of mankind. C. R. Vol. X, p. 590. The members of the Council of Safety were Cornelius Harnett, Willie Jones, James Coor, John Simpson, Th. Jones, Hill, Eaton, Williams, Samuel Ashe, Person, Rand, Alexander and Sharpe.

<sup>2</sup> The sessions were held as follows: First, Wilmington, June 5–June 15, 1776. Second, Wm. Whitfield's, in Dobbs Co., June 19–July 16. Third, Halifax, July 21–Aug. 13. Fourth, Joel Lane's, in Wake Co., Aug. 21–Aug. 28. Fifth, Salisbury, Sept. 5–Sept. 12. Sixth, Halifax, Sept. 27–Oct. 25.



only power. Centralization prevailed over localism, and the usurped authority of the county committees was destroyed. This Council made its influence felt in the smallest details of administration. Cornelius Harnett was made president,<sup>1</sup> and his activity may be seen in the excellent military equipment of the State. The determinations of this Council were generally just, as justice went in that day, but to those local leaders or commanders of troops, called upon to execute these decrees, the triumph of the American cause and not justice was the guiding principle. The chief work of the Council was to secure the sinews of war. To do this, it established a political censorship and centralized power. This could not have been done in the previous year. The Provisional Government had served its purpose, and the dangerous power of the county committees had given way to it.

*Efficiency of the Provisional Government.*—Though in existence little more than a year, this government had shown its efficiency by conducting the province in safety through its peril. It was essentially a government for war, and its acts pertained in great part to war. It sent troops to aid Virginia,<sup>2</sup> suppressed the dangerous uprising of the Scotch, aided South Carolina against the Scovillite Tories<sup>3</sup> and repelled the attack of the Indians on the West. In administration the work of the committees was the same. There was no authority too high for a county committee to usurp, nor any detail too small for the central committee to consider.<sup>4</sup>

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<sup>1</sup> Cornelius Harnett was practically Governor of North Carolina during this entire period. Willie Jones was a member for the province at large and not president, as Wheeler says: Vol. II, p. 188. He presided at the last meeting at Halifax.

<sup>2</sup> Col. Howe with the 2d Continental, and a militia battalion went to Norfolk, and so valuable was their aid that the Virginia Convention gave them a vote of thanks.

<sup>3</sup> Cols. Rutherford, Polk and Martin embodied the militia of the western counties and went to South Carolina and aided in prostrating the Tory party in that State. Troops were also sent to Charleston.

<sup>4</sup> The Rowan County committee was largely a law court, while the eastern committees dealt mostly with affairs of war. The Wilming-



Neither the Provincial Council nor the Council of Safety had any fixed abode or defined powers. If anything was to be done they did it or appointed some one to do it. They voted according to districts, the territory and not the people of the State being the basis of representation. Even the Congress voted by counties. In some counties the Tory element predominated, and in such places the county committees were helpless or worse, as they might even contain a majority of Tories. In cases of this kind some partisan leader, such as Ebenezer Folsome,<sup>1</sup> with his band of soldiers would carry out the orders of the Council. These leaders would sweep across the country with retinues of soldiers and inflict summary punishment wherever the good of the cause demanded it.

The Provincial Government strove to equip North Carolina for the impending conflict. The province seems to have become one vast military school. It appointed committees to confer with the neighboring colonies for better defense, fitted out armed vessels for the protection of trade, equipped trading vessels to secure arms and ammunition, ordered the purchase of the best literature that it might be disseminated to offset Governor Martin's proclamations, commanded public highways to be put in good condition, and other muniments of war. It permitted provisions to be sent to Governor Martin so long as he made no hostile attack on the province. Millers were ordered to grind for foe as well as friend. The Council declared against wanton cruelty, and sought to assuage the bitterness of internal strife, but temporary governments are liable to great abuses. Only outside danger and the oneness of purpose of the leaders saved the Provisional Governments in America from this charge.

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ton Committee was the most active and was in almost daily session in times of imminent danger.

<sup>1</sup> Folsome lived among the Scotchmen and was the most prominent of these partisan leaders. Finally he grew so independent that he was summoned before the Council for usurpation of power.

They were the means of transforming royal provinces into independent States. Their work they did well, and their moderation won many friends for the American cause, but there was always a feeling of uneasiness, and it was not long before North Carolina was engaged in the creation of a government which was to be permanent.

## III.

## FORMATION OF THE FIRST STATE GOVERNMENT.

It was generally understood when the Congress adjourned in May that there would be a new Congress in the following November. During the summer of 1776 the news came that the Continental Congress had passed the acts declaratory of independence from the government of Great Britain. Its influence on the province was only to close completely the door of reconciliation. The government already in existence was independent of Great Britain. The declaration was read in every county in the State, even at Cross Creek, the home of the disaffected Scotchmen.<sup>1</sup> The reading of the document was accompanied with great enthusiasm.<sup>2</sup> On August 9, 1776, the State Council of Safety issued a call for the Constitutional Convention,<sup>3</sup> in which the people

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<sup>1</sup> There was some delay in reading at Cross Creek in Cumberland County, there being no committee, but Ebenezer Folsome and David Smith were ordered to have it read. C. R. Vol. X, p. 695.

<sup>2</sup> At Halifax, Harnett himself read it to an enthusiastic multitude assembled from the adjacent country.

<sup>3</sup> This resolution has been regarded as the outcome of political partisanship, and the insistence on the exercise of great care in the selection of delegates as designed to secure the defeat of Samuel Johnston, the Conservative leader of the last Congress. It does not appear that the Council by this recommendation transgressed its bounds. The making of the Constitution was the most important question before the people of the State at this time. Its destiny was largely determined by this convention. The Council gave as their reason the adoption of the Declaration of Independence by the Continental Congress.

were recommended to exercise the greatest care in the election of delegates, since they were not only to make laws, but to form a Constitution, the corner-stone of all law on which depended the welfare or misery of the State.<sup>1</sup>

The political cleavage which appeared when the Constitution was first proposed at the previous Congress became wider now. There was no immediate danger from an outside foe; nor was there any pressing exigency such as makes a State feel the need of all its best men, consequently, the campaign that followed upon this call showed all the bitterness of a modern political campaign. Some of the conservatives in the former Congress had expressed their contempt for the new<sup>2</sup> form of government in language that irritated the radicals. There were disturbances at the polls and frauds in election, while rioting and debauchery prevailed in some counties. Though the leader of the conservative forces, Samuel Johnston, was defeated, many of his political friends were returned, some even from his own county. The conservative party favored a representative republicanism, while the radicals championed democracy.

The Convention, or Congress, assembled at Halifax, November 12, 1776. On the next day a committee<sup>3</sup> was appointed to lay before the House a Bill of Rights and form of

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<sup>1</sup>The convention was called for the special purpose of making a constitution, but it was not different from the former congress.

<sup>2</sup>Samuel Johnston said he had no confidence in it and declared that he would take no part in the execution of it, that numbers had now started on the race for popularity and were condescending to the usual means. A strong and determined effort was made to defeat him, and was successful. He had been the leader since the death of John Harvey, but for once his people were prevailed upon to desert him. Johnston's political opponents rejoiced greatly over their victory, and concluded by burning him in effigy. C. R. Vol. X, p. 1032. Iredell's Letters, Vol. I, 334, *et seq.*

<sup>3</sup>On the committee were Caswell, General Person, General Jones, General Ashe, Nash, W. Jones, Th. Jones, Neal, Samuel Ashe, Haywood, General Ruthford, Hogan, Alexander, Abbot, Luke Sumner, Th. Respis, Maclaine, Hewes, Harnett, Sharpe, Spicer, Hill, Coor, Harvey, Birdsong, and Irwin, C. R. Vol. X, p. 918.

Constitution. The general features of the form of government must have been understood, since the heated discussions of the former Congress were educational. The first question that came before the House was the method of voting.<sup>1</sup> The first Provincial Congress had adopted the method of voting by counties. There was a very good reason for it at that time. It helped to keep down Tory influence, while at the same time it permitted large delegations to represent each county. So many wished to be delegates that the Congress resolved to let each county decide for itself how many should be elected. The counties paid the salaries of their own representatives. The purpose for which the method had been introduced had now been carried out, so it was decided to abolish the cumbrous system and adopt individual voting in its stead.

The report of the Committee on the Constitution presented a Bill of Rights and proposed a form of government.<sup>2</sup> The former Congress in discussing a Constitution had made no mention of a Bill of Rights, but some of the delegates to this convention had been instructed to secure the introduction of one into the Constitution.<sup>3</sup> Not only were they so instructed, but they were presented with the declarations to be embodied in it. These declarations, however, were not adopted, though others were. The American Bills of Rights are solemn declarations of abstract principles relating to the origin and purpose of government. They are digests from the experience of the free people of England and America in their struggle for constitutional liberty. The American Constitution makers, though the

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<sup>1</sup> C. R. Vol. X, p. 1017.

<sup>2</sup> On Dec. 6th, Th. Jones for the committee reported the form of government and on Dec. 12th the Bill of Rights. Both were read paragraph by paragraph and discussed, but no record was made of the discussion. The Bill of Rights was adopted Dec. 12th, 1776, and the form of government Dec. 18, 1776.

<sup>3</sup> Mecklenburg and Orange counties instructed their delegates and formulated the principles they wished embodied. (C. R. Vol. X, pp. 870a-890b.)



making of Constitutions was still in its infancy, were well-grounded in these principles; they held aloft the principles of English liberty. The English Bill of Rights is the natural outgrowth of Magna Charta. It furnished the model on which the Americans builded. Some of its clauses were adopted verbatim. Into the American Bills were inserted doctrines that could not well be inserted elsewhere, yet were matters of such high importance and wide application that they could not be omitted. There is no logical sequence in them, no scientific arrangement, though drawn generally by lawyers. The North Carolina Bill of Rights consisted of twenty-five paragraphs, containing, for the most part, the general fundamental principles upon which free governments rest. While these principles take root deep back in English history, yet the form in which they appear in this bill is more modern. It was composed in part by taking sections of the various Constitutions<sup>1</sup> which were before the Congress and combining them. It can lay claim to originality neither in conception nor expression. What suited their purpose best, that they took.<sup>2</sup> The men were too busy to

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<sup>1</sup> William Hooper sent from Philadelphia the plans of government of several provinces. It is probable that he sent that of Delaware, New Jersey, Pennsylvania and Rhode Island. C. R. Vol. X, pp. 870, 862, 868.

The Connecticut plan was before them, as was also that of South Carolina. Maryland had already adopted its Constitution. Caswell, the president, was a native of Maryland, and so it is probable a copy of the Maryland Constitution was before them.

<sup>2</sup> Sections II, IV, XXIV, XX, VII and XII are found verbatim in the Maryland bill. There are nine other sections differing only in a word here and there, viz., sections I, II, X, XI, XVIII, XV, III, XXII.

Sections XIX, II, XIV, XVII, XXI, XIX may be found in the Pennsylvania bill.

Sections V, IX, XI, XVII, are in the Virginia bill.

These states formed their Constitutions before the meeting of the Constitutional Convention, or Congress. (Poole: *Constitutions and Charters*.) The Maryland bill contributed more than any other. The course that Maryland took was closely observed by the province of North Carolina. (Letters of Iredell: C. R. Vol. X, 1038.)

hesitate to copy verbatim what served their ends. They were men of action rather than of the closet.

The State Constitutions are the oldest creation in the political history of American States. The colonists brought with them charters which molded their local institutions. The State governments were based upon the principles of these early charters. The governments of this period also reveal to us the meaning of democracy as understood at that time. Democracy is a growth, and what is democratic in one age may appear aristocratic in another. In the history of the development of democracy many contests have been waged. The constitutional purpose of the struggle in 1776 was the curtailment of executive power. The contest was between the legislative and the executive. Democracy meant opposition to royal prerogative. To limit the power of the executive and to increase that of the legislative was the most significant intent of the Constitution makers of this convention. In this light only did democracy triumph, for the executive was made dependent upon the Legislature. The Constitution contains provisions relating to the general policy of the State, as well as to its political organization. In this respect the Constitution has grown, for as questions of State policy have become settled they have gradually been embodied in the Constitution. The form of government as adopted was the outgrowth of what had been proposed at the last Congress, though much amended and amplified.

There were still the party differences that appeared at the first proposition of a Constitution, but after several weeks of the session had passed a form of government was agreed upon which was as follows:<sup>1</sup>

*The Executive Power* was vested in a Governor, who was to be elected jointly by both Houses of the General Assembly on the first meeting after each annual election. He was eligible three years out of six, was required to be thirty years of age and to have resided in the State five years previous to

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<sup>1</sup> Poole's Constitutions and Charters.

his election. The requirement, possession of a free-hold and tenements above the value of £1000, showed that the influence of the landed aristocracy predominated in politics. The powers of the office as far as they went were those usually found accompanying a chief executive. He was commander-in-chief of the militia, and might call them out in times of peace with the consent of the Council of State. But even this power or executive prerogative was not respected by the Legislature, which regarded the executive as a puppet whose power was to be curtailed or increased as suited the legislative fancy. In September, 1780, the Legislature decided to create a Board of War and to give it the power over the military, which the Constitution had given to the Governor as commander-in-chief. The Governor was made the mere executive of the decisions of this Board.<sup>1</sup> Governor Nash resented this interference with his constitutional privileges, and a controversy ensued which caused Nash to resign. Though the creation of the Board was manifestly unconstitutional, yet the Governor could only submit, since he had no veto, and it was not yet a principle that the judiciary could declare void an act of the Legislature. By the creation of this Board was destroyed that unity so essential in times of danger. The Board itself was soon found inefficient and inconvenient, and was abolished January, 1781.<sup>2</sup> Upon his resignation, Nash was succeeded by Burke, who was taken prisoner in the late summer. Martin succeeded him, and changed the policy of the State. Within one year the State had three different policies. Not content with the former degradation of the Governor, the Assembly asked General Smallwood, of the Maryland Line, to take command of the

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<sup>1</sup>Iredell: Letters, Vol. I, p. 458.; Sparks' Biographies, Davie: XXV, p. 53 *et seq.*

<sup>2</sup>The members of the board were Alex. Martin, John Penn, and Oroondates Davis. Not being men of any military experience of importance, they provoked only disrespect. Wm. R. Davis said that Martin was indeed a warrior of surpassing fame, Penn was only fit to amuse children, that Davis "knew only the game of whist."

militia. He exercised this authority during the trying experiences of 1781. (Iredell's Letters, Vol. I, 458).

When Cornwallis decided to make his second invasion into North Carolina from the South, and so divide the confederation, there was much consternation in North Carolina. The Assembly had just met at Halifax. The menace of an invasion frightened them so that they prepared for serious emergencies. By an enormous stretch of constitutional power they created a Council Extraordinary, to consist of three men such as the Assembly might choose. They were to exercise all the powers of the Board of War and the Council of State. This Council and Governor Nash were invested with the full executive powers of government to continue after the expiration of the Governor's official term if the invasion of the enemy precluded the holding of elections or the meeting of the General Assembly at the usual time.<sup>1</sup> This Council Extraordinary was very energetic in securing subsistence for Greene's army, which was now largely dependent on North Carolina for its support in that struggle which was antecedent to the surrender at Yorktown. The executive, so frequently deprived of its power, could do little for the State or show itself worthy of respect. This frequent change of policy entailed much friction, but the necessities of the time are the extenuating circumstances to plead in its defense.

There were few active powers with which the Governor was invested. He might draw and apply money for the contingencies of government, when the Assembly had voted it; grant pardons except where there were restrictions; lay embargoes and prohibit the exportation of any commodity for a term not exceeding thirty days when the Assembly was not in session, but the Council had to consent to this. These restrictions remained for sixty years, till the Constitutional Convention of 1835. In case of death or inability or absence

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<sup>1</sup> Iredell, I, p. 484. Caswell, Martin and Bignal composed the Council. Their salary was £200 per day.



from the State he was to be succeeded first by the Speaker of Senate, and afterwards by Speaker of the House.<sup>1</sup> So little confidence did this Congress have in an executive, or so much did they fear the repetition of acts of the royal executive, that it created a committee known as the Council of State to watch over and control the Governor in the execution of his office. This Council was composed of seven persons, who were elected by the General Assembly each year. Members of this Council were ineligible to a seat in either House, four members constituted a quorum, their proceedings were recorded in a journal in which any member might enter his dissent. This Council continued authoritative advisors of or rather controllers of the Governor till 1868. The Council is at present simply advisory, and no longer possesses the power it once did. A Secretary of State was likewise appointed by the Assembly, but triennially. He, too, was ineligible to a seat either in the Assembly or Council of State.

*The Legislative Power* of the State was vested in a General Assembly composed of two Houses, the Upper House, or Senate, and the Lower House, or House of Commons. This Senate was the smaller body, and was to be composed of one representative from each county in the State, to be chosen annually by ballot. He was required to have lived in the county one year immediately preceding his election, and to be the owner of 300 acres of land in fee. To be a qualified elector for the Senate it was necessary to be twenty-one years of age, to have resided one year in any one county of the State immediately preceding the election, and to have been in the possession of a freehold of fifty acres in the same county six months previous to the election.

*The House of Commons* was organized on a more democratic basis.<sup>2</sup> The number of representatives was greater

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<sup>1</sup> When the constituents of Wm. Hooper asked him on his return home what power they had given the governor, he replied, "Only power enough to sign a receipt for his salary." Wheeler : p. 288.

<sup>2</sup> The name has since been changed to House of Representatives, but the old name is still inscribed above the Hall door.



for it was to be composed of two representatives from each county, and one each from the towns of Edenton, New Berne, Salisbury, Halifax and Hillsboro. All were elected annually. Members of the House of Commons were required to possess only 100 acres of land either in fee or for life. To be an elector in the county, it was not necessary to possess lands, but simply to be twenty-one years of age, to have resided in the county one year previous to the election, and to have paid public taxes. The franchise in the towns entitled to representation was somewhat different. "All persons who possessed a freehold in the town, and also all freemen who had been resident of such a town for twelve months previous and at the day of election, and who had paid public taxes, were entitled to vote." No one was allowed to vote in both town and county.

As has been before stated, the Royal Government was more favorable to a wide suffrage than the Whig Government. Under the Royal Government it was extended to "inhabitants;" under the Provisional Government to "freeholders;" under Constitutional Government, there were various restrictions, but especially a land qualification. But it must be borne in mind that land was very cheap, and that with a few dollars a freehold or a large estate might be secured. As the State grew great inequalities sprang up on this basis of representation, which were not corrected till 1835, when the basis was modified. The old basis of territorial representation was amended by substitution of that of population and taxation.

*Annual Elections* were strongly contended for. Both parties favored them. The conservative party had little confidence in any of the Constitutions that had been formed by the different colonies, but thought that annual elections would be some check on the oppressive tyranny of an oppressive Legislature. The ultra-democratic party believed that where annual elections ended, there tyranny began. This same doctrine was proclaimed more than half a century later, when biennial elections were under consideration.

There was no constitutional requirement as to how often or when the Assembly was to meet. Twice a year was the custom. Neither was there established a seat of government. The Assembly went from town to town. Different towns were anxious for it, and this served to beget jealousies. It was not till 1788 that a permanent seat of government was selected, and the city of Raleigh was created.

In the early Assemblies the popular party predominated, and much complaint is heard of irrational conduct.<sup>1</sup> The General Assembly also kept control over the appointment of military offices of importance. Generals and field officers of the militia and all officers of the regular army were appointed by the General Assembly. They chose delegates to the Continental Congress annually, and the Constitution allowed them to hold office only three years out of six. It also declared that they were to be selected only so long as it was deemed necessary.

*Judiciary.*—When the Constitutional Convention of 1776 met, North Carolina had been practically without courts since 1773. During the Provisional Government the Provincial Council and the Council of Safety had served as a judiciary. Though courts and court laws had been so much discussed during the last days of royal rule, this Constitutional Convention was slow to act. The unsettled condition of the times did not favor a full understanding of what was best for the State. Realizing the difficulty, the convention postponed the creation of a judiciary. It contented itself with declaring that the judges should be elected by the General Assembly, and should hold their offices during good behavior and receive adequate compensation. Whatever system might be adopted later, the convention determined that it should be dependent on the Legislature, for it gave no guarantee that the offices of the judges might not be abolished or their salaries diminished. The Constitution established justices' courts, but the justices were appointed

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<sup>1</sup> Letters of Iredell.

by the Governor upon the recommendation of the General Assembly. To empty the crowded jails, the Assembly ordered temporary Courts of Oyer and Terminer to be held in several districts, and they were held during the next spring.

There were some who wished to establish the judicial system at once, but as has been stated, other judgment prevailed. At the first meeting of the General Assembly in the next year, April, 1777, these efforts were renewed, but in vain. The affairs of the province were still too much disturbed. The chief interest lay in that greater struggle which was being waged for American independence. The matter was postponed till the second meeting of same year, November, 1777, when a permanent court system was created. The system established bears close resemblance to the courts under the Royal Government.<sup>1</sup> The State was divided into six districts;<sup>2</sup> in each district court was to be held twice a year, presided over by the three judges<sup>3</sup> elected by the General Assembly. Equity jurisdiction was not bestowed on the court till 1782. The judges appointed the clerks of the courts in the various districts, and they, too, held their office during good behavior. This court contests with other States the honor of declaring void the acts of a Legislature because of their unconstitutionality.<sup>4</sup> But these courts were

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<sup>1</sup> It was at first proposed to elect these justices by popular vote, but it was decided that countless inconveniencies would arise by this method. More than a century has passed but the question of the election of justices is still a living issue. Iredell, I, p. 338

<sup>2</sup> It is so nearly a copy of the Act of 1767 as to suggest the probability of having been drafted by the same lawyer. Battle: Supreme Court, N. C., Reports 103.

<sup>3</sup> Wilmington, Newbern, Edeton, Halifax, Hillsboro and Salisbury.

<sup>4</sup> Samuel Spencer of Anson, Samuel Ashe of New Hanover, and James Iredell of Edenton. Iredell served one year and resigned, being succeeded by John Williams of Granville. This was the constitution of the court till the death of Spencer in 1794. Ashe was elected Governor in 1795, and Williams died in 1799.

<sup>5</sup> At the May term of 1786, an action was brought for the recovery of a house and lot in Newbern, the party in possession having purchased it from the commissioners of forfeited estates. The Legisla-

district courts corresponding to the present Superior Courts. There was no Supreme Court with appellate jurisdiction. The Supreme Court as it exists at the present time has been a slow subsequent growth.<sup>1</sup>

The Constitution not only established a form of government, but it also marked out the policy of the State in regard to certain institutions. In regard to religion, it declared that there should be no established<sup>2</sup> Church, and that every man should worship God according to the dictates of his own conscience.<sup>3</sup> Though the makers of the State Constitutions

tive Act required the court to dismiss all actions against one holding under a title derived from the State by a deed from the commissioners. Nash, for the defendant, moved the dismissal of the suit. The court *refused to dismiss* at this session, and left the matter unsettled. In August of the same year James Iredell, a former member of the Court, wrote a lengthy letter maintaining that it was proper to overrule the motion. At the May term, 1787, the Court separately but unanimously overruled the motion to dismiss. Several States claim the credit of priority in this. Thayer: *Cases on Constitutional Law*, Part I, pp. 79, 80; Coxe, *Jud. Powers and Unconstitutional Legislation*, p. 248 *et seq.*; McRee's *Life and Correspondence of Iredell*.

<sup>1</sup> In 1799, James Glasgow, Secretary of State, and others were charged with fraudulent issues of land warrants. The Legislature ordered the courts to meet twice a year in the capital of the State, Raleigh, for the trial of such cases and incidentally of appeals that had accumulated in district courts, the Act continuing to 1802 only. This Act as regards appeals was, in 1801, continued for three years more, and the court was styled "Court of Conference." In 1804, this was made a court of record; in 1805, its name was changed to "Supreme Court;" in 1810, the judges of the court, were required to elect a Chief Justice. In 1818, the Supreme Court as contemplated in the constitution of 1776, was established. Judge Walter Clark in *Green Bag*. 1893. IV, 459.

<sup>2</sup> Section 34, which declares against a church establishment, may be found in sections XVIII and XIX of the New Jersey Constitution. The Orange county and Mecklenburg county instructions declare against establishment for religious freedom. C. R. X, p. 870g.

<sup>3</sup> Section 19 of the Bill of Rights is found in Penn. Declaration of Rights, Sec. 2. The Mecklenburg and the Orange instructions also declare for the free exercise of religion. These instructions were



were willing to grant religious toleration, they were equally watchful to guard against ecclesiastical influence in legislation. Many of the States declared the clergy ineligible to any civil office or to a seat in any legislative body.<sup>1</sup> The Constitution of 1776 declared that no clergyman in the exercise of pastoral duties might have a seat in the Senate, House of Commons or Council of State.<sup>2</sup> The 32d article of the Constitution excluded from office all persons denying the being of God, or the truth of the Protestant religion, or the divine authority of the Old and New Testament, or holding religious views incompatible with freedom. In the requirement of religious tests the Constitution makers failed to show the breadth of charity which had characterized their actions. These restrictions were never rigorously enforced, but at the time of their adoption they represented the views of many persons.<sup>3</sup> The debate grew so warm over this clause that there was danger of undoing everything. But as the measure was approved by a prominent and influential ecclesiastic, it was adopted.<sup>4</sup> In North Carolina the clause

given to the delegates to the Constitutional Convention. Those of Mecklenburg are in the handwriting of Waightsell Avery, and those of Orange of Thomas Burke. C. R. Vol. X, p. 870 *et seq.*

<sup>1</sup> The Constitutions of Georgia, South Carolina, and New York so declare.

<sup>2</sup> David Caldwell, of Guilford, is said to have been the writer of this clause and to have secured its adoption. Moore, Vol. I, p. 228. A similar section is found in the Delaware Constitution, Sec. 29,

<sup>3</sup> The historians of the State have ascribed to David Caldwell, a Presbyterian minister, the authorship of this section. While he doubtless championed it, the Mecklenburg instructions advised their delegates to vote for the following clause: viz., "That any person who shall hereafter profess himself to be an atheist or deny the being of God or shall deny or blaspheme any of the persons of the Holy Trinity or shall deny the divine authority of the Old and New Testaments or shall be of the Roman Catholic religion shall not sustain, hold or enjoy any office of trust or profit in North Carolina." C. R. Vol. X, p. 870d. These same instructions forbid freedom of worship to "idolatrous worshippers."

<sup>4</sup> Georgia and South Carolina required in some cases a Protestant qualification, while Pennsylvania, Delaware, and New Jersey showed their Protestant sympathies in their Constitutions.



was never used for the purpose of persecution, and Catholics, Jews and ministers were alike elected to responsible places.<sup>1</sup>

This Constitution also declared that the Legislature should establish a school or schools at which the youth could secure instruction at low rates; and that all useful learning should be encouraged in one or more universities. This clause, which was copied from the Constitution of Pennsylvania, section 34, gave birth to the present University of North Carolina, and at a later date to the public-school system.<sup>2</sup> Thus early did the State recognize the importance of instruction, but the aristocratic element in the State was as yet too predominant for the State to exercise itself in behalf of popular education.

*Authorship of the Constitution.*—American Constitutions are compromises; they did not spring full-grown from the brain of any one man. So thoroughly had many men studied the nature of government that it was impossible for one man to impose his views upon a convention. The records of the debates in the Federal Convention enable one to establish the authorship of the Federal Constitution, but this cannot be done in North Carolina, for there is no record of the discussions upon its Constitution. As in the Federal Convention, so it was in the State Convention; there were two parties, and the Constitution shows the influence of each. Not one man, but many, aided in making it. To

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<sup>1</sup> Wm. Gaston, a devout and consistent Catholic, was a member of the House of Commons, and its Speaker of the State Senate, Congressman, and Associate Justice of the Supreme Court of the State before this 32nd article was repealed. Louis Henry, a Jew, was elected to a seat in the General Assembly but was not allowed to take his seat, though he was permitted to make his defense on the floor of the Assembly. Josiah Crudup, a Baptist minister, though elected to the General Assembly, did not take his seat because of the Constitutional requirement.

<sup>2</sup> In the Pennsylvania clause it is required to establish schools in every county. The Mecklenburg instructions asked for an endowed institution in their county. C. R. Vol. X, p. 870.

Thomas Jones, of Edenton, more than to any other man have the historians of North Carolina ascribed the making of the Constitution. The Constitution contains elements both conservative and radical. Samuel Johnston was the conservative leader, and one of the most powerful and influential men of the province. He was not a member of this convention, but he was present in his capacity as one of the treasurers of the province. Mr. Jones was his intimate friend, and both lived in the same town. Johnson saw the Constitution before it was adopted, and criticised a certain passage, which was afterwards changed. But it is not possible to say how much influence Johnson exerted through Jones. Johnson was not at all pleased with the Constitution, and congratulated himself that he was not a member of the Congress. He said the Constitution was as good as that adopted by any of the other States, but that they were all bad. To him is probably due the conservative tone of the Constitution. Others have claimed that Caswell was so popular that he dictated the principles, if not the very words of the Constitution. This was simply a tradition, but it fits in very well with the observation made above, that the Bill of Rights was very largely copied from that of Maryland.<sup>1</sup> Caswell was a native of Maryland. He was undoubtedly very popular, having received the thanks of the Provincial Congress for his gallantry at Moore's Creek. He was also elected the first Governor.

There is no denial of the influence that these men and others had in shaping and giving direction to the machinery of government. Some of them were scholars, having studied

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<sup>1</sup> Jones had been a member of the two previous Congresses and had served on the Committees on Government. He was a lawyer, shrewd and astute, and a member of the committee on civil government in the Constitutional Convention. The presiding officer, Caswell, was chairman of the committee, but Th. Jones was its mouth-piece, making its reports to the Convention. He is often also found introducing measures to put the new government into operation. Samuel Johnston alluded to the Constitution as "Jones' Constitution."

at the best institutions in America and Great Britain, but the condition of society in the province was that of a frontier State.<sup>1</sup> The province had been making rapid strides in material advancement, but there had been little inclination or opportunity for philosophic studies.<sup>2</sup> Such being the circumstances, the province did what was both wise and natural, consulted a political philosopher, John Adams, of Massachusetts, in regard to the new government.<sup>3</sup> In the winter of 1776 Adams wrote his "Thoughts on Government," and sent copies of it to many of his personal and political friends.<sup>4</sup> The delegates from North Carolina to the Continental Congress at this time were Hooper, Penn and Hewes. Adams alludes to John Penn as "my honest and sincere friend." It is very improbable to suppose that these men did not see a copy of this pamphlet. Hooper and Penn had both been elected members of the Fourth Provincial Congress, the first Congress to discuss a Constitution. They attended this Congress, and both were made members of the committee on the form of government.<sup>4</sup> Furthermore, it is claimed that

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<sup>1</sup> Debates in Convention of 1835, p. 318. Moore: II, p. 226. Judge Toomer said in the Convention of 1835, that it was a tradition that Caswell was the author.

<sup>2</sup> Willie Jones had studied at Glasgow and Avery at Princeton.

<sup>3</sup> It was not until May 10, 1776, that the Continental Congress advised the States to form governments such as suited them for the administration of civil affairs. Before this time John Adams had been agitating the matter, but the Continental Congress was slow to pass a measure that would commit them irretrievably to the course of revolution. Various States, however, had had the matter in contemplation, but they knew not how to pass from colonial government to independent States; they feared that the transition might result in anarchy. But Adams and others knew that the colonial governments were fast crumbling into ruins. Adams: Vol. IV, p. 191.

<sup>4</sup> In January, 1776, George Wythe, of Virginia, spent an evening with Adams and in the conversation told him of the feeling in the provinces and the difficulty of transition, that the provinces knew how to get rid of the old government but did not know what to substitute. He, furthermore, asked Adams to write an outline of a form of government suitable for these provinces. Adams consented, and the result was his "Thoughts on Government." The article was

Mr. Adams sent his "Thoughts on Government" to Thomas Burke, Orange County, North Carolina, who was a member of this Convention and of the Committee on Government.<sup>1</sup> It is also maintained that early in the year 1776, the delegates from North Carolina were authorized to apply to Mr. Adams for his views on the nature of the government it would be proper to form in case of dissolution, and that Mr. Adams replied by letter to John Penn in which are put about the same ideas as are found in the pamphlet, and that another letter of the same kind was sent to Thomas Burke.<sup>2</sup>

There is internal evidence that suggests, if it does not prove, that the plan of John Adams was well known to these law-makers at Halifax. Though the proceedings of the Convention make no mention of Adams's name, yet the outline of the form of government presented to the Provincial Congress in April, 1776, bears a very close resemblance to the plan outlined in Adams's "Thoughts on Government," and his letter to Penn.<sup>3</sup> But this plan was neither adopted nor rejected; the committee made its report and was excused. Another committee was at once appointed, April 30, 1776, to prepare a form of temporary government to continue until

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shown to Richard Henry Lee, who asked permission to have it printed. Adams gave his consent, but requested that his name should not be used, as he did not wish to be accused of advising a course to which, if they once committed themselves, would stop short of nothing less than independence. Adams: Vol. IV, p. 191.

<sup>1</sup> C. R. Vol. X, p. 516.

<sup>2</sup> University Magazine, 1857, IV, p. 259.

<sup>3</sup> The letter to Penn was not discovered until 1814, when John Taylor of Caroline county, Virginia, published it as his inquiry into the Principles and Policy of the Government of the United States. John Taylor was the son-in-law of Penn. This letter as published by Taylor bears no date, and Mr. Adams did not keep a copy of it. The letter to Burke was not discovered until 1846, when Governor Burke's papers came into the hands of the State Historical Association. Adams: I, 209.



the next session.<sup>1</sup> Mr. Burke was made chairman, and Penn and Hooper members.<sup>2</sup> The further consideration of a Constitution was postponed until the next session of the Congress, November, 1776, when a complete form of government was adopted. It also resembles Adams's outlines.<sup>3</sup>

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<sup>1</sup> The outline proposed to the previous Provincial Congress was as follows :

*a.* A House of Representatives of the people—all free householders of one year's standing to vote. The Adams' plan proposed a House to represent the people but did not specify electors.

*b.* A Legislative Council to consist of one member from each county and to sit as Upper House and to be a check on House of Representatives, and none but freeholders to be allowed to vote for councilmen. The Adams' plan recommended a Legislative Council which was to be a check on the House of Representatives, but that for the present its members should be elected by the House of Representatives, and in times of more tranquillity by the freeholders.

*c.* An Executive Council to consist of a president and six councilors to be always sitting. The Adams' plan proposed a Governor and Privy Council which Council was to be selected from the Legislative Council and that six or seven were to constitute a quorum. This Council was to advise the Governor in the exercise of all his power.

*d.* These officers were to be elected annually, but Th. Jones wrote that it was probable the president might be allowed to serve three years out of six. This was also contained in Adams' suggestion.

<sup>2</sup> Penn'and Hooper had come down from Philadelphia to attend the Congress.

<sup>3</sup> The Adams' plan and the form of government finally adopted agree in the following respects, that the Assembly should be composed of two Houses, have the power of electing the Governor, Attorney-General, Treasurer, and Secretary of State ; and impeaching ; that elections should be frequent ; that the Governor should be elected annually, but might serve three years out of six ; that the other officers, Attorney-General and Treasurer, were to be elected annually ; the Secretary of State was by the Constitution to be elected triennially, and Adams had suggested triennial elections ; that these officers were to be elected by joint ballot of both Houses ; that there should be a council to advise the Governor ; that the Governor should be commander of the militia, and have the power of granting pardon and reprieves ; that the judiciary should be independent of both the legislative and the executive and should serve for term of life or good behavior, and should be liable to impeachment ; that sheriffs should be chosen in the counties by freeholders ; that all courts should run



The influence of John Adams and his "Thoughts on Government" upon the form of government instituted for the State was through Burke and Penn.<sup>1</sup> The government established in North Carolina bears resemblance not only to the plan of John Adams, but also to the Provisional and Colonial Governments which had preceded it. It was formed both by growth and by adoption. The advice of Adams was acceptable, because it preserved the historical continuity of provincial growth. The men who composed the convention at Halifax were brave, earnest and sincere, but above all else practical; they were men of action rather than theory, of the forest and plain rather than the closet and study. The time came when they wanted a Constitution, and like practical men they took the best they could find. The wisdom of their action is shown in the fact that not even an amendment was made to the Constitution for fifty-nine years.

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in the "name of the Colony or State of North Carolina," and that indictments should conclude, "against the peace and dignity of the same."

<sup>1</sup> Of the two counties which sent instructed delegates to the Constitutional Convention, Orange was one, and this county was the home of both Burke and Penn. The other county was Mecklenburg, which is in the same section of the State. These instructions resemble in some particulars the Adams' plan and the Constitution adopted. The instructions from Orange county are in the handwriting of Th. Burke. Both these counties urged that whatever form might be adopted it should be submitted to the people in every county for adoption or rejection, but there was probably neither inclination nor time to do this. It was left for Massachusetts, the home of Adams, to be the only State to submit this form of agreement to the people.

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Liber Albus.



Jared Sparks

AND

Alexis de Tocqueville





SERIES XVI

No. 12

JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
HISTORICAL AND POLITICAL SCIENCE  
HERBERT B. ADAMS, Editor

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History is past Politics and Politics are present History.—*Freeman*

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Jared Sparks  
AND  
Alexis de Tocqueville

BY

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# Jared Sparks and Alexis de Tocqueville.\*

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## I.

### INTRODUCTORY CORRESPONDENCE.

Jared Sparks made the acquaintance of Alexis de Tocqueville in the year 1828, during a visit to Paris for the discovery of materials for American history in the French archives. Three years later Tocqueville came over to America for the purpose of studying the democratic institutions of this country. France had entered upon a more popular form of constitutional government under Louis Philippe, the citizen king, and Tocqueville was eager to collect historical evidence from the United States to justify the attempt of a great people to govern itself. Democracy in America was reviewed by him for the political encouragement and practical instruction of the French people. With this patriotic intent Tocqueville set out to discover the fundamental institutions of American self-government. He went to Boston and made inquiries regarding the organization of New England towns. Just as Edward Augustus

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\*The recent publication by The Century Company of a new edition of Tocqueville's "Democracy in America," with a biographical introduction by President D. C. Gilman, revived the idea of printing, in the Johns Hopkins University Studies, the present series of letters, illustrating the relations of Alexis de Tocqueville with Jared Sparks. Permission to make special use of these materials was kindly accorded five years ago by representatives of the Sparks family. Indeed, at the time (1893) when the work, entitled "The Life and Writings of Jared Sparks," was published by Houghton & Mifflin, the editor contemplated the issue of this monograph in connection with the studies because of Mr. Sparks' "Observations on the Government of Towns in Massachusetts," one of the original sources of Tocqueville's information. The publication of this paper, long ago announced, has been hitherto delayed by press of other matters.



Freeman, Maxime Kovalevsky, James Bryce and others interested themselves in the local life of our American commonwealths, so Alexis de Tocqueville went to the very sources of American democracy. It is not generally known that some of the most authentic information which Tocqueville obtained upon the subject of town government in New England came from that pioneer of American institutional history, Jared Sparks.

In Mr. Sparks' journal for January 20, 1832, appears the following account of the original objects of the government mission of Tocqueville and Beaumont to America and of Mr. Sparks' relation to one of the two main lines of their inquiry. "Two French gentlemen, Messrs. Beaumont and Tocqueville, were here three months ago, employed in examining the system of prisons, and other local institutions. They were sent out for this purpose by the French government. They have been very desirous to get some ideas of the municipal, or town governments in New England. No books treat of this matter, and if they did, they could hardly be understood by a foreigner wholly unacquainted with the habits of the people. At their solicitation I agreed to write an account of the system, as far as it could be made intelligible, and suited to persons but little informed on the subject. The principles are important in regard to any changes that may be contemplated in the municipal establishments of France. I have performed my promise, and written a memoir, entitled 'Observations on the Town Governments of Massachusetts.' I have hinted at the origin of the towns, the progress of their habits of governing themselves, and drawn out in as plain a form as possible the system as it now exists in practice. It has been a task of much labor, for there are few things more difficult than to write intelligibly on a subject which seems to the writer to be familiar to all, and about which nobody makes inquiries, because the whole subject is treasured up among his first ideas, and is preserved fresh by every day's habit. In such a case it is difficult to discriminate between what a foreigner

would at once comprehend, and what would be obscure and beyond the compass of his knowledge. I have done as well as I could, and written a plain statement of principles, laws, and customs upon which the town governments are founded, and their mode of operation."

A letter from Tocqueville to Sparks was written on that journey westward which President Gilman has so graphically described in his introduction to the Century edition of "Democracy in America," Vol. I, xii: "After crossing the Alleghanies, at the beginning of a severe winter, they proceeded by way of Wheeling to Cincinnati. The river was full of ice. The steamer came into great perils. A landing was made at Westport, Kentucky, and the travelers, finding no equipage, walked to Louisville, whence they took a stage for Nashville."

#### TOCQUEVILLE TO SPARKS.

CINCINNATI, December 2, 1831.

Vous avez bien voulu, Monsieur, me promettre de m'écrire à Washington pour me donner sur le Massachusetts les renseignements que mon court séjour à Boston ne m'a pas permis de recueillir par moi-même et qui, me venant de vous, me seront doublement précieux. J'ai pensé bien des fois depuis, qu'en vous faisant cette demande j'avais grandement abusé de l'amitié que vous nous avez témoignée; mais en même tems j'ai songé que vous me pardonneriez sans doute en considération du motif qui me fait agir et qui, comme vous le savez, n'est point seulement une vaine curiosité. C'est cette dernière raison qui m'encourage à vous écrire aujourd'hui pour vous prier d'ajouter au service que vous voulez bien me rendre, celui de m'écrire à une époque plus rapprochée que celle dont nous étions convenus. Vous savez que notre intention était de quitter l'Amérique dans le courant d'avril prochain; diverses circonstances, qu'il serait trop long d'expliquer ici, nous forcent de partir dans les premiers jours de février. Si donc vous avez tou-

jours l'intention de m'écrire, je vous prierais instamment de le faire avant la fin de janvier 1832.

Plus je m'éloigne du Massachusetts, Monsieur, plus je sens vivement le regret de n'y avoir pas fait un plus long séjour. Nulle part, dans les portions de l'union que j'ai déjà parcourues depuis mon départ de Boston, je n'ai trouvé des institutions communales qui me parussent approcher de celles qui sont en vigueur dans la Nouvelle Angleterre. C'est là une vérité dont je suis pas encore peut-être juge très compétant, mais que proclament unanimement les hommes éclairés des états que je viens de visiter. Il eût donc été d'une immense importance pour moi d'étudier sur les lieux les principes, les formes et les moyens d'action de ce gouvernement local dont, depuis si long tems en France, nous sentons le besoin et cherchons le modèle. Rien de plus difficile que de comprendre le jeu d'une pareille machine en la voyant décrite dans les livres, surtout dans des livres qui ne renferment point d'idées générales et n'adoptent point un ordre méthodique. Le seul ouvrage dans lequel j'ai pu puiser jusqu'à présent quelques lumières sur la marche pratique de votre système communal, est intitulé *Town-officer*. Il m'avait été indiqué par M. Quincy, le Président de l'université de Cambridge: c'est un livre dont le mérite littéraire et philosophique est nul, et dont l'utilité toute pratique suppose même toujours dans le lecteur la connaissance des coutumes et des lois. Je crains donc de m'être souvent égaré en le lisant.

La première chose qui m'a frappé à l'examen de cet ouvrage, c'est le grand nombre de fonctionnaires différens qui compose votre Magistrature municipale. Ainsi, indépendamment des principaux officiers, l'ouvrage, dont je parle, s'occupe de divers fonctionnaires publics auxquels il donne les noms de fence-viewers, field-Driver, fire-ward, hog-Reeve, measurer of wood, parish-officers, sealer of Weights and Measures, Surveyor of highways, Surveyor of Lumber, town clerk, tythingmen . . . ces officiers existent-ils en fait ou seulement dans la loi? Existents-ils partout, ou

seulement dans les grandes townships? Voilà ce que je ne puis deviner.

Si ces officiers sont en effet nommés chaque année, remplissent-ils exactement les fonctions que leur attribue l'auteur du *Town-officer*? C'est encore là un point que j'ignore. Je sais seulement que chez tous les peuples il y a une grande différence entre la lettre de la loi et son exécution. Je vois à l'article *Selectman*, que les Selectmen, lorsqu'ils s'aperçoivent qu'un ou plusieurs habitans de la commune ruinent leur santé ou leur fortune ou perdent habituellement leur tems à boire, font afficher le nom de ces individus dans les cabarets, et les cabaretiers ne peuvent plus leur fournir de vin ni de liqueurs fortes. Les Selectmen doivent aussi dénoncer aux juges de Probate ceux dont l'inconduite est de nature à amener une interdiction. Les Selectmen ont-ils en effet ces droits, et surtout en usent-ils?

Autre exemple: le constable et les tythingmen doivent veiller à l'observation du Dimanche; ils doivent poursuivre les *Blasphémateurs* et les joueurs; ils doivent arrêter les voyageurs le Dimanche; s'enquérir des motifs qui les forcent à voyager ce jour-là, et les empêcher de continuer leur route si ces motifs ne leur paraissent pas suffisans—de pareilles lois ne sont-elles pas tombées en désuétude?

Il y a un article en particulier auquel j'avoue que je ne puis rien comprendre: c'est celui intitulé *Parish and Parish officers*. Il semble en effet en résulter que chaque town est obligé d'entretenir un *Ministre protestant*; faute de quoi, elle est condamnée à l'amende par la cour de common pleas du Comté. Ceci me paraît établir jusqu'à un certain point une *Religion d'état* et faire de la politique et de la Religion un mélange qu'on semble avoir pris à tâche d'éviter en Amérique.

Un peu plus loin, je lis que parmi les habitans d'une commune chacun est libre d'abandonner *a Parish*, mais sous la condition d'en joindre une autre; d'où je conclus que la loi oblige d'avoir une Religion, bien qu'elle ne se prononce point entre les diverses communions Protestantes.

Je croyais jusqu'ici que parmi vous, chaque congrégation avait le droit exclusif de choisir et de renvoyer son pasteur ; mais j'apprends, en lisant le *Town-officer*, que la Congrégation religieuse, qui est désignée sous le nom de Parish, ne peut congédier le Pasteur que dans certains cas prévus et suivant certaines formes. Ce qui semble faire du Ministre un sorte d'officier civil. Il y a évidemment sur ces différens points quelques principes généraux que j'ignore et qui me donneraient la clé de tout le reste.

En général, je commence à connaître à peu près votre organisation municipale dans ce qu'elle a de matériel. Je vois la lettre de la loi, mais son esprit m'échappe ; le Droit m'est connu, le fait me manque. Il me semble que, théoriquement parlant, vous n'avez pas suivi, pour les *communes ordinaires* (not incorporated towns) le système du gouvernement représentatif établi partout ailleurs. Vos communes me paraissent se gouverner elles-mêmes dans le sens naturel du mot, comme les communes de l'antiquité. La Direction des affaires communales n'est point confiée à un corps d'administrateurs élus annuellement ; elle appartient directement au peuple que les Selectmen doivent consulter pour toutes les mesures importantes, et de la volonté duquel ils sont purement et simplement les exécuteurs.

Voilà, je crois, les principes du Droit. Me trompois-je ? Comment le met-on en pratique et quels en sont les effets ? C'est ce qui n'est pas moins important de savoir et ce qu'aucun livre ne saurait m'apprendre. En fait, la Commune toute entière est-elle souvent consultée ? Quel peut être le caractère de ces assemblées ? Comment peut-on y traiter des affaires délicates et y suivre un système quelconque d'administration ? Ne forment-elles point des foyers d'intrigues et ne sont-elles pas portées, comme toutes les grandes assemblées populaires, à se laisser entraîner bien plus par des passions que par des argumens ?

Vous voyez, Monsieur, que je suis incorrigible ; je commence ma lettre par m'excuser de vous avoir fait des questions et finis en vous en faisant de nouvelles. Je voudrais



bien, Monsieur, que pour m'absoudre, vous voulussiez bien, de votre côté, nous mettre à même de vous être de quelque utilité à notre retour en Europe. Ce serait, je vous jure, nous rendre un véritable service que de nous fournir l'occasion de vous être agréable et de reconnaître en même tems les bons procédés de vos compatriotes à notre égard en vous facilitant la terminaison du bel ouvrage que vous avez entrepris.

Veuillez, Monsieur, recevoir, tant en mon nom qu'en celui de M. Beaumont l'assurance de notre considération la plus distinguée.

P. S.—Mr. Hale, l'éditeur d'un des principaux journaux de Boston, a bien voulu nous promettre quelques documens sur l'état de la presse périodique en Amérique. Si vous aviez l'occasion de le voir, seriez vous assez bon pour l'avertir du changement de nos projets et le prier de nous écrire avant le 1 février prochain?

#### SPARKS TO TOCQUEVILLE.

"BOSTON, January 11, 1832.

"I should sooner have replied to your letter of the 2d of December, dated at Cincinnati, had I supposed you would have returned to Washington. I have not forgotten my promise to write the paper you desired, on the modes of municipal government in Massachusetts, and I will endeavor to answer the queries contained in your letter, as well as those which you left in writing before your departure from Boston. It is not easy to make the subject fully intelligible to a person unacquainted with the long practices and habits of the people, but I may perhaps be able to give hints which will remove some of your difficulties.

"As soon as you get this letter, please to inform me at what time you will sail from New York, and to whose address in that city I shall send the paper. Should you not sail before the 10th of February I shall probably see you in New York.

"Let me observe to you, that Mr. Niles, the American Secretary of Legation in Paris, is a native of New England and has lived many years in this country, and will doubtless be able to explain many things to you respecting the details of managing our town affairs.

"I am happy to inform you, that since your departure I have received letters from Paris, telling me that the government have permitted the papers to be examined, concerning which I conversed with you, and that a person is now employed in that work.

"In a few days I shall publish the *Life of Gouverneur Morris*, formerly American Minister in France. It contains some curious matters about the French Revolution. He was in Paris from 1789 to 1794. When the work is published I shall beg the favor of you to accept a copy."

Tocqueville's next letter to Sparks was written from Washington. From Nashville he had gone to Memphis, thence by steamboat to New Orleans. From Louisiana the French travelers went to Montgomery, thence to Norfolk and Washington.

#### TOCQUEVILLE TO SPARKS.

WASHINGTON, January 20, 1832.

J'ai trouvé avant hier en arrivant ici, Monsieur, l'aimable lettre que vous avez bien voulu m'écrire en date de 11 de ce mois. Je me hâte de vous informer, suivant le désir que vous m'en témoignez, que vous pouvez adresser les papiers que vous me destinez, à New York, care of Messrs. Prince, Ward, King & Co., chez qui nous nous empresserons de les aller prendre. J'espère que vous serez mieux encore, Monsieur; et que vos affaires vous amèneront à New York avant notre départ de cette ville; notre intention étant de ne nous embarquer que dans le paquebot du 10 février prochain. Ce sera avec un bien vif plaisir, je vous assure, que je renouvellerai avec vous les rapports agréables que nous avons eu à Boston.

Votre lettre m'apprend qu'enfin le gouvernement français vous accorde la permission que vous sollicitiez ; je m'en suis réjoui pour vous et aussi pour lui. Les obstacles qu'on vous opposait étaient misérables. Quant au reste, Monsieur, je suis presque tenté de voir avec regret une mesure qui me prive de l'espérance de vous être utile. Si par hasard cependant il se présentait encore en France quelque occasion de vous servir, veuillez, je vous prie, compter sur tous mes efforts.

Je ne veux point terminer, Monsieur, sans vous remercier d'avance du présent que vous comptez me faire. La vie de Gouverneur Morris est un ouvrage doublement précieux pour moi ; il traite en quelque sorte de la France comme de l'Amérique et de plus il est écrit par vous.

Nous ne savons encore où nous descendrons à New York ; mais si vous voulez faire savoir votre adresse à Mr. Prince, nous nous hâterons de vous aller chercher. M. de Beaumont me charge de le rappeler particulièrement à votre souvenir. Agréez, pour moi, Monsieur, l'assurance de ma considération la plus distinguée.

#### SPARKS TO TOCQUEVILLE.

Just before Tocqueville sailed for Europe Sparks wrote him the following letter from

"BOSTON, February 2, 1832.

"In the enclosed memoir I have endeavored to give a general and condensed view of the system of town government in Massachusetts, embracing at the same time the answers to your queries. I have avoided going into details, because these are suggested by the 'Town Officer.' Such of your queries as did not seem to be fully answered in the memoir, I have considered separately at the end.

"The Town Officer, you will remember, is only a selection from such parts of the laws of the State as pertain to towns, and presupposes in the reader a knowledge of the usages of the people. It is designed to point out the duties of town officers.

"You inquire whether all the officers there mentioned are in fact chosen and perform the duties prescribed. I believe they are all invariably chosen and their duties are for the most part discharged with a good deal of exactness in obedience to the laws. It is rare, however, that the tythingmen stop people who travel on the Sabbath, but this is still sometimes done. The duty of the Selectmen to apprehend profane and immoral persons, to post up the names of drunkards, tipplers, gamblers, and the like, is exercised in flagrant cases. In the discharge of all such duties much depends, of course, on the judgment and discretion of the officers.

"Should other queries arise in your mind after reading the memoir, I shall be very happy to answer them, and I trust you will at all times write to me freely on this or any other subject. My pursuits, researches, and observations make me well acquainted with the political and municipal institutions of the United States, and it will always give me pleasure to communicate to you any intelligence that may be in my power."

Of historic interest to students of American local institutions will be the "Observations on the Government of Towns in Massachusetts," by Jared Sparks. These observations have a double value for Americans: first, as recording the actual characteristics of New England town government at the time Tocqueville wrote about it, and, second, as affording a means of comparison with Tocqueville's chapter v, Vol. I, in "Democracy in America."

Mr. James Bryce prepared the way for his now famous work on our "American Commonwealth," by a critique of Tocqueville's "Democracy in America,"<sup>1</sup> at a meeting of the

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<sup>1</sup>One of the fruits of Mr. Bryce's American studies and a pleasant souvenir of that evening with the Hopkins Historical Seminary was his paper on "The Predictions of Hamilton and De Tocqueville," published in the *University Studies* in September, 1887, Vol. V. No. 9. Bryce's "American Commonwealth" was published in the fall of 1888. In the *Fortnightly Review* for October, 1882, through Mr.

Historical Seminary in the Johns Hopkins University. In this critique he was aided by the evidence given from various parts of the country by some of our graduate students, for example, Albert Shaw, now editor of *The Review of Reviews*, then a graduate student in Baltimore.

## II.

### OBSERVATIONS BY JARED SPARKS ON THE GOVERNMENT OF TOWNS IN MASSACHUSETTS.

In considering this subject, it is necessary to keep in mind the mode in which the country was originally settled. The first establishment was at Plymouth, and consisted of only one hundred and one persons, surrounded by a vast wilderness, uninhabited except by a few savages. As far as the rights and forms of government were concerned, the new settlers, when they landed, were in a state of nature. For mutual convenience and security they agreed on a system of social and political regulations, which had the effect of laws. This was the simplest form of a republic. Each person had a voice in the several councils, and all rules and decisions were established by a majority of voices. As circumstances required it they adopted new regulations, or laws, but always upon the same principles, that is, the equal rights of each individual, and the power of a majority to control the whole. The people chose a governor, and other suitable officers for administering the government, to whom limited powers were granted and whose duties were prescribed by the people themselves.

Within a few years other settlements were established by new emigrants from England, and being remote from the original settlement at Plymouth, and from each other, they

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Bryce's mediation, was published Albert Shaw's "Local Government in America," republished in the *University Studies*, Vol. I, No. 3, January, 1883, as "Local Government in Illinois." See original abstract in *University Circular*, May, 1882. See also *N. Y. Times*, Dec. 10, 1898, Albert Shaw on "De Tocqueville."



adopted similar modes of government, acting, for all essential purposes, as independent republics, after the model and under the general guidance of the earliest establishment. In this way they soon acquired the knowledge and habits of local government, and from these habits, thus early rooted, and never abandoned, has been derived the present municipal system of New England.

As the settlements increased in numbers it was convenient for them to unite under some general form of government, in order to protect themselves against the Indians, and for other advantages common to all parties. There commenced the system of representation in proportion to the numbers of the people, and by a free suffrage in elections, which is in fact the basis and the continuing support of all the political institutions. When the settlements, or towns as we may now call them, first agreed to this union, they had individually, in their own hands, the power which pertains to a social or political compact. Thence it is obvious that they would give up no more than was essential to the general interests without divesting themselves of their primitive rights or deranging their local forms of government already established. There again is another principle of the American institutions, which is, that a superior government exercises such powers only as are delegated to it by an inferior, or, in other words, by the people.

This united government formed by representatives from the settlements, was called the General Court, and it has retained the name ever since. Before the Revolution this was subject to various modifications by charters from England in which the king assumed more power than the people approved, leaving them little else than the appointment of representatives to one branch of the Legislature; but this never affected the municipal organization already described, and within the limits of a town, the people were always a body politic, acting, under certain restrictions, as an independent republic, in the regulation and control of their local affairs.

These preliminary remarks will prepare us for examining the system as it is now in operation.

### TOWNS.

At first a town was an indefinite number of people living near each other, and associating for purposes of mutual benefit, without regard to the extent of land, or territory which they occupied. But after a general government was instituted, under a charter from the king of England, the towns possessed the power of incorporate bodies, and each town was usually defined by specified bounds; so that a town, or, as it was sometimes called, a township, embraced all the inhabitants residing within those bounds. Upon an average these townships are about six miles square, but varying as local circumstances and other causes required when they were formed. Hence the corporate powers of a town extend to a territorial jurisdiction, without reference to the number of people dwelling within the prescribed limits. These corporate powers are confirmed by acts of the Legislature, and exist in the nature of legal rights, founded on usage and early habits. Such are the elements of the present system of town governments.

By the laws of the State certain duties are required of the towns in their corporate capacity, and certain privileges allowed. They are required to hold elections for the choice of a governor, lieutenant-governor, Senators, Representatives to the Legislature, and such town officers as are designated in the laws. They are required to assess and collect taxes to keep the public roads in repair, to support religious worship and schools, and in general to execute all the laws which pertain exclusively to towns. Again they are allowed to make by-laws or regulations which do not contravene the laws of the State, to employ such clergymen, and in such numbers as they may think proper, to establish as many schools, and appoint such teachers as they choose, to lay out roads in any part of the town, and to suspend for one year

the operation of particular laws of the State which relate solely to some of the internal affairs of the town.

These requisitions and privileges are common to all the towns in the State, or, in other words, the laws of the State are uniform and apply equally in their full extent to every town.

There are a few unincorporated towns in the State, perhaps half a dozen, which have fewer privileges than the others, but when the number of rateable polls, or voters, amount to one hundred and fifty, they may become incorporated.

#### TOWN MEETINGS.

The towns are required to hold town meetings at certain times, for the choice of State and town officers. They may also assemble in town meeting at any other time, for transacting the affairs of the town. In these meetings the legal voters only can act, and the will of the majority of those present is binding on the whole town. But in such case due notice of the meeting must have been given according to law. The principle is, that the majority rules in all town meetings, but that each voter shall know beforehand the time of the meeting, and the object for which it is to be convened. In the town meetings there is freedom of debate, and the voters present have a right to express their opinions fully on the subjects brought before the meeting.

#### SELECTMEN.

The selectmen are the principal officers of a town and are chosen annually. They can never be less than three in number, nor more than nine. They are assisted by a town clerk, who acts as secretary and performs other duties. The selectmen preside at the town meetings for the election of governor, lieutenant-governor, Senators and Representatives, but at the meetings for the town officers and transacting other town business, a moderator presides, who is chosen

at the opening of the meeting, and has no powers except to preside for that occasion. The duties of the selectmen, like those of other town officers, are defined by law. Besides presiding at elections, they can lay out roads anywhere within the town, and watch over the morals and health of the inhabitants. They are guardians of the poor, when officers for that purpose are not specially chosen; they draw out jurors for attending the courts, and appoint certain subordinate officers as auctioneers, weighers, measurers, inspectors, and some others. In general it is the business of the selectmen to see that the laws which relate to the towns are executed, to preserve order, and to carry into effect the regulations of police.

#### TAXES.

It is a principle that all taxes for the support of government, both in regard to the State and for executing town regulations, shall be levied on each individual in proportion to his property. A poll tax is also levied within a limited amount. But all direct taxes throughout the State are levied and collected by the towns. Once in ten years the Legislature appoints a committee, who receive returns of the quantity of lands and other kinds of property in the several towns. From these returns the committee make an estimate of the aggregate amount of property in each town, and this amount is the basis on which the tax of each town for State purposes is levied during the ten years following. Again, each town makes an annual valuation of the property of every individual within its limits, and apportions all taxes accordingly.

There are three kinds of taxes, namely, for State, county, and town purposes. The State tax is apportioned by the Legislature to each town, according to its amount of property, and the portion which falls to each town is assessed by the town itself on the individuals within the town in proportion to their property. The same rule holds in respect

to county taxes. The town taxes are those which the town itself imposes, either for the support of public worship, schools and roads, or for executing any local regulations of the town, which have been sanctioned by the vote of a majority in a town meeting. Hence, every kind of direct tax is ultimately apportioned and collected by the towns. The officers appointed for this purpose are assessors, collectors, and treasurer. They are chosen annually at a town meeting. The assessors determine the value of each person's property, and assign the amount of his tax. A list of the whole is given by them to the collectors, who collect the tax, and pay it over to the treasurers, that is, they pay the amount of the State tax to the treasurer of the State, the county tax to the treasurer of the county, and the town tax to the treasurer of the town. These treasurers pay out the money thus collected to persons authorized by law to receive it, and who appropriate it to its destined use in defraying the expenditures, voted either by the Legislature of the State, or by the town meetings. It will be seen by this process that the people literally tax themselves either by their representatives in the Legislature or by their own votes in town meetings, and determine in what way the money shall be expended. All taxes are assessed and collected by officers residing among the people, and chosen by them, and who are acquainted with the persons and property of each individual.

#### SCHOOLS.

The school system in Massachusetts dates its origin at the first settlement of the towns. It has been the theory and the practice from the beginning, that every child in the community should be taught reading and the other useful branches of education. It may safely be added that this has been the foundation from which all our republican institutions have arisen and upon which they now stand. Freedom in civilized society cannot exist without intelligence. So thoroughly have the people been convinced of this prin-



ciple, and so rigidly have they adhered to it, that the laws have not only provided for schools but made it compulsory upon parents or guardians to send their children to these schools till they shall be suitably instructed. In cases of neglect on the part of parents, either through poverty or carelessness, it is the duty of the selectmen to take charge of the children and see that they are properly educated.

Every town in which there are fifty families is required by law to maintain a school at least six months in the year. Where the towns are larger, the schools are to be multiplied in proportion to the number of families. As these laws originated in the disposition and habits of the people, there has never been any reluctance in carrying them into execution. On the contrary, there are very few towns in the State, perhaps none, in which the number of schools and the provisions for instruction are not greater than the law exacts. In the principal towns there are schools of a higher order, and academies, also private schools which are supported at the voluntary charge of individuals.

#### SCHOOL DISTRICTS.

The size and population of the towns make it necessary that more than one school should be established in each. To effect this a town has the power by a vote in town meeting to divide itself into districts, in each of which a school is established. These districts vary in number from five to twelve, or perhaps more or less, according to the extent of the town. In this way a school is brought within a convenient distance of every family.

#### SCHOOL COMMITTEES.

To superintend the affairs of the schools a committee is annually chosen at a town meeting. It is the business of this committee to examine and ascertain the literary and moral qualifications of the instructors, to visit the schools at certain times, to decide on the kind of books to be used,

and see that the schools are provided with them, and also to report annually to the Legislature of the State the amount of money paid for schools, the number of districts in each town, the number of pupils, and the length of time which the schools have been kept. The districts have power to choose a person from among themselves, called a prudential committeeman, who takes care that the schoolhouse is kept in repair, that fuel is provided, and whatever else is necessary for the immediate convenience and comfort of the teacher and pupils. The districts may also select their own teachers, but they must be approved by the school committee of the town.

The school tax is assessed on the whole town, like any other tax, and is paid out to the districts in proportion to the population in each, or to the number of pupils, as the town may agree. If any district wishes the school to be kept for a longer time than is provided for by their portion of the town tax, they may tax themselves for that purpose to any extent they choose, but in this case the school is in the nature of a private school, and not under the control of the town, nor are any persons required to pay but such as send their children or voluntarily agree to contribute their share. It is not uncommon for schools to be continued, at the voluntary charge of a district, beyond the time provided for by the town. The school committees have in no case anything to do with the private schools. They act only in those instances where money is paid from the general tax.

In nearly all the towns the schools are kept for a longer time than is required by law. In the larger towns some of the schools are continued through the year, but for the most part they are kept for about three months in winter by a male teacher, and three or four months in summer by a female teacher. The school committee visit all the schools in the town twice in the winter and twice in the summer.

## RELIGION.

The Constitution and laws of Massachusetts require that public worship, after some form of the Protestant religion, shall be supported in each town. This provision, like many others, had its origin in the first settlement of the country. The emigrants were dissenters from the Church of England who, from the strictness and peculiarity of their faith, were called Puritans. Their social and political organizations partook of their ecclesiastical spirit, and the affairs of state and of religion became mingled in a manner not very consistent with republican freedom or a wise administration of government. The defects of this system, however, have been gradually wearing away. Salutory changes have been introduced from time to time, and it may be expected that the intelligence and good sense of the people will soon effect a total separation between all matters of religion and politics. In fact, as things now stand, there is very little hardship upon any one in conforming to the laws, but the principle of compulsion in religious concerns is radically wrong, an encroachment upon conscience and an unjust assumption of power. It is one of those cases in which early prejudices, habit, and accidental causes, may pervert the sense of a majority and operate against the equal rights of the whole. It will be corrected by time and experience.

## PARISHES.

When the first towns were settled the inhabitants were all of the same religious faith, that is, dissenters from the English Church, and calling themselves, from that circumstance, "Independents." Hence it was natural and easy for them to unite in supporting the same form of worship. All the people in the town could attend at one meeting-house and listen to the preaching of one clergyman. It was convenient, therefore, to regulate their parish and town affairs in the same manner, and to vote money and assess taxes upon

the same principle for each. Church and state were thus united in a single settlement, or town. As the towns increased in number a political union was formed, and the General Court, or Legislature, was established, laws were passed for supporting the local institutions as they then existed, applicable equally to each town, and to such towns as should afterwards be settled or incorporated. These laws accorded with the voice of the people; they were sanctioned by custom, and under various modifications they have continued till the present day. In some of the towns of larger extent, as the inhabitants multiplied, it was found necessary to have more than one place of worship. For this purpose the towns were, in some instances, divided into territorial districts, and each district was a parish, empowered to act for itself in whatever pertained to the support of religion, such as employing a clergyman, building a meeting-house, and the like, but in every other respect the inhabitants of such district or parish were an integral part of the town, partaking the privileges and subject to the control of the town meetings.

#### RELIGIOUS SOCIETIES.

The parishes above described have a territorial extent, that is, they either embrace a whole town or a definite portion, which has been set off by fixed boundaries. But there is another kind of parishes, more commonly called religious societies, or congregations, which are constituted upon a different principle. In the compact and populous towns, the people would of course have a preference for a clergyman or religious congregation, without regard to the part of the town in which the meeting-house was situated. To accommodate this preference distinct societies were allowed to be formed by any number of persons who chose to associate for the purpose of supporting religious worship. Again, the forms of religious faith began to multiply, and Baptists, Methodists, Presbyterians, Episcopalians, and

other sects claimed the privilege of supporting worship according to their own views. These sects likewise organized themselves into separate societies. Such has been the practice from early times. These societies possess all the powers of a territorial parish and are subject to the same laws, being corporate bodies, and acting with perfect freedom in the regulation of their religious affairs.

The contract between a clergyman and a parish is considered for life, unless it is otherwise expressed in the terms of the contract. Hence no parish can dismiss a clergyman without his consent, except for improper conduct. The common mode of dismissal is for each party to choose persons to form a council, who examine and judge the case. If the council decide that there is just cause for a separation, the parish are no longer bound to pay the clergyman's salary, and of course the contract is dissolved. But disability on account of personal weakness, ill-health, or age, is not a sufficient cause for dismissing a clergyman.

The principle of the laws concerning religion, as they now stand, is that every person in the State who pays taxes shall contribute to the support of some form of religious worship, but the particular form of worship, and manner of supporting it, are left to his own option. For this purpose the parishes, or societies, may tax themselves in the same way as a town. Any person may also leave one parish, or society, and join another by giving due notice. But whoever resides in a town is subject to pay a tax to the oldest parish, unless he gives notice in legal form that he belongs to some other. But it is not necessary that the society to which he belongs, or professes to belong, should be in the town in which he lives. It may be in any part of the State. Should he belong to a religious society in which it costs nothing, or very little, to support public worship, as is the case with the Methodists, whose clergymen are traveling preachers, then he is not taxed at all. It is common for some societies to support their preachers by voluntary contributions, and then there is no tax.



## ENCLOSURES.

When the townships were originally surveyed and laid out they consisted either wholly or mostly of wild and uncultivated lands. For the convenience of the first settlers it was customary to reserve a tract near the center of the town, which was held in common by the inhabitants. Within this tract it became the practice to let cattle, horses, and other domestic animals run at large, and as every inhabitant owned a share, by virtue of his residence in the town, it was open to the use of all. Hence it was necessary that the cultivated fields should be well enclosed whenever they bordered on the highways, to prevent the encroachments of these animals. Every man had a right, also, to let his cattle run freely on his own lands, and hence the necessity of good fences between himself and his neighbors. The farms were small and this increased the extent of boundaries between the lands of different persons. From these circumstances it will be seen that laws were required to regulate the mode of enclosing fields, and to fix penalties for the depredations made by cattle.

For executing these laws the towns appoint officers, called fence-viewers, field-drivers, and hog-reeves. Their duties are important in preserving peace and harmony among neighbors. As the laws restricting cattle from running in the highways pertain exclusively to the interests of a single town without affecting those of the State at large, any town has the right to suspend the operation of these laws by a vote of the majority, for a term not exceeding one year.

## REMARKS.

Such are the general principles of the municipal or town governments of Massachusetts, and for the most part of all the New England States except that of supporting religion by law, which is now peculiar to Massachusetts, though it formerly pertained to some of the other States. The ruling

features are the system of election and the prevailing power of the majority to govern the whole. The laws of the State on municipal subjects have grown out of the early habits and previous usages of the towns, and by producing uniformity they now consolidate them into one political body, at the same time that they allow all the liberty requisite for local self-government. The laws are made by representatives sent from the towns. The representatives are accustomed to act constantly as political agents in managing town affairs, and from the habit of acting upon the same principles, though living in different parts of the State, they come together with similar views and are qualified to judge of the nature, utility and consequences of any laws designed to affect the whole. Hence the groundwork of the State government is in the towns, and each town is in some sort an epitome of the State. To abridge their liberties, or restrain their power of political action, would be to undermine and destroy the whole fabric.

It will be observed that the powers of the towns are mostly of an executive kind. They choose officers to effect certain purposes prescribed by the laws, both in regard to their internal concerns and the welfare of the State. They have a limited legislative power, enabling them to adopt municipal regulations which do not conflict with the laws of the State, but they have no judicial powers whatever, either for criminal or civil purposes. These powers are in the hands of judiciary officers appointed by the State. All breaches of the law must come before the courts thus organized, and a town itself as a corporate body is amenable to the same tribunal.

#### ANSWERS TO QUERIES PROPOSED BY M. DE TOCQUEVILLE.

1. "*Is there a permanent executive power in the towns, and by whom is this power exercised?*"

Every town has all the power requisite for executing the municipal laws of the State, and such other regulations as

the town itself may make when assembled in town meetings. This power is exercised by the selectmen and other officers chosen by the people for that purpose. Although the power is permanent in the towns, it can never exist more than one year in the hands of any particular officers, unless they are chosen anew. All the town elections are annual.

2. *“Can a town effect any enterprise without applying to a higher power? Can a town buy and sell, contract loans, and maintain actions in a court of Justice?”*

As the towns are corporate bodies, they can hold property, buy and sell, contract loans, bring suits in the courts, and transact any other business common to corporations. All such affairs are decided in town meetings by a majority. If a specific object were to be effected, a purchase made, a loan contracted, or a suit prosecuted, the practice would be to call a town meeting, and the people would authorize the selectmen to manage the affair, or appoint separate commissioners for that specific object. The credit of a town is always good because the whole property of the inhabitants, or any part of it, may be seized for the payment of a debt which has been contracted in consequence of a vote in a town meeting. Towns may also be sued in the courts by other corporate bodies, or by individuals who dwell in the town or anywhere else. If a laborer or any other person has a demand against a town for services rendered according to a contract with the selectmen, he may sue the town and collect his demand in the courts. Every person's property in the town is held liable to be taken to satisfy such a demand.

It is a rule that the majority governs, but in imposing taxes there is a limit to this power. If an unequal or unjust tax is laid by a town meeting, or one for effecting an object that does not promote a general benefit, any individual aggrieved has a remedy in the courts of law. He must pay the tax in compliance with the vote of the town, but he may then prosecute the town for the amount of his tax and bring

the matter before a court of justice. This tribunal will decide whether the tax was legal, and if not, the town is obliged to pay back the amount. This case rarely occurs, because it can seldom happen that a majority of the people, living scattered as they do throughout the town, will vote to tax themselves for an object that is not for the public advantage.

3. *“Can two or more towns unite in a common object? Can they establish relations between each other?”*

Towns can establish no relations between each other without the consent of the Legislature. For instance, two towns cannot assemble and act together in one town meeting. Such a thing probably never happened, and if it should the acts of the meeting would be illegal and void. They may agree to unite in accomplishing any object common to the interests of both, but this must be done by authority conferred on the selectmen or other officials by each town separately.

4. *“Can the towns present petitions to the Legislature collectively?”*

Every town, every corporation, every society and every individual in the State has a right to present petitions to the Legislature. Consequently, two or more towns may petition for the same thing, but the common mode would be for them to present separate petitions.

5. *“To what extent does the Legislature interfere with the internal administration of the towns?”*

The Legislature has nothing to do with the municipal affairs of the towns, except as occasion may require to make and amend the laws which regulate generally the town governments. These laws, as heretofore observed, apply equally to every town, and the representatives themselves, who constitute the Legislature, and by whom the laws are

made, are inhabitants of the respective towns and chosen annually by the people.

6. “*What is the precise meaning of the term corporation?*”

A corporation is a body politic, or an assembly of persons authorized to act as an individual, to the extent of the powers granted them by law. There are two kinds of corporations, namely, such as are formed by acts of the Legislature with a specific name and for some definite purpose, and such as possess corporate powers from the nature of the privileges allowed them by the laws. Of the first kind are colleges, insurance offices, banks, hospitals, manufacturing companies, and the like. Towns, parishes and school districts are of the second kind; that is, no town, parish, or school district has ever been incorporated by an express act of the Legislature, but the powers granted them by law are such as could not be exercised except by a corporate body. Hence they are in fact corporations, and are called such, or rather in technical phrase, *quasi* corporations. The corporation of a city is of the first kind and constituted by an act of the Legislature. Boston is the only city in the commonwealth. Toutes les autres villes sont *towns*.

7. “*What is the general system of constructing roads and keeping them in repair?*”

The Legislature has the power to make roads in any part of the State. But this power is never exercised directly by the Legislature. It is the business of the counties and towns to make and repair the roads. When a new road is to be laid out, which passes through more than one town, it must be done by the county commissioners. The value of the land through which any such road passes, is also determined by the commissioners, and the amount is paid out of the county treasury to the owners of the land, in proportion to the claim of each. The first expense of making



a new road of this sort is paid by the county, but it is afterwards kept in repair by the towns. The tax for making the road is apportioned to each town in the county and collected in the usual way. A town may lay out roads anywhere within its own territory, but has no right to run them into another town without the consent of that town.

Hence there are two kinds of roads, called county roads, and town roads, but the duty and expense of keeping them in repair devolve wholly on the towns. The method is for the town to assess a highway tax on the inhabitants and appoint surveyors of highways. The selectmen may divide the town into districts, or prescribe the limits within which each surveyor is to act. It is the duty of a surveyor to see that all the roads within his district are repaired at certain times, and also whenever they are out of order. For this purpose he can call on each inhabitant of his district to pay the amount of his tax, either in labor or money. The common practice is for the people to work on the roads themselves, their labor being estimated at a fixed price. But this is optional, and they may pay their tax in money if they prefer it, and with this the surveyor will employ other laborers. All the inhabitants of the district are interested in keeping the roads in repair, because these roads are mainly for their own use.

Turnpike roads are made by incorporated companies, who petition the Legislature for the privilege of making a road between one place and another, and by a specific route. The road is laid out by the company, and the lands through which it passes are valued by the county commissioners and paid for by the company. The road is then made and kept in repair at the expense of the company, and a toll is allowed for their remuneration. The property of the road then becomes a stock, which is divided into shares that may be bought and sold like the property of any other incorporated body. The toll is the income of these shares.

Canals and railroads are constructed upon the same principles. They are never made by the Legislature but by

voluntary companies. The Legislature may buy shares, but when this is done it is generally with the view of encouraging some public work. There is no compulsion on the towns to aid in such enterprises. But it is a principle of the Constitution, that every person whose property is taken for a public use shall receive a full equivalent. Hence, whenever a new road or canal passes through any person's land, he is to be paid for all the damage he thus sustains.

8. *“From what class are the teachers of schools generally chosen? Are there any clergymen among them?”*

This depends on the kind of school, whether primary or of a higher order. In the large towns there is commonly one or more schools kept through the year. The teachers of such schools have usually been educated at some college or academy and make teaching the occupation of their lives. But the subordinate schools, which are kept only for a part of the year, are mostly taught by young men who are students in a college or academy and who are allowed to leave these institutions for two or three months. In the summer the same schools are kept by young women who have been suitably educated. At this season the small children only attend the schools, as the labor of the boys and larger pupils is wanted on the farms and in the families. There is, also, a well-informed class of men in the community who are capable of teaching the primary schools in the winter, and who are engaged in farming or other occupations the rest of the year. Clergymen sometimes take private pupils into their own families, but they rarely engage in public instruction when connected with a parish. A large portion of the ablest men in New England have been teachers of town schools while obtaining their collegiate education.

9. *“What part does religion occupy in the instruction at the schools?”*

The discretion of the teacher, or the directions of the school committees, are the only guides on this subject.

These again will be modified by the religious tenets of the people; and as these vary on account of the variety of sects, no system is followed. In many schools the New Testament is used as a class-book, but religious dogmas, or what may be called sectarian tenets, are rarely taught in schools. Formerly this was more the practice than at present, because the religious sentiments of the people were more alike.

10. *“Are the effects of education uniformly good? Does it not happen that a man, who obtains an education superior to his social condition, becomes an inquiet and turbulent citizen?”*

No such evil has ever been experienced as a consequence of education. On the contrary, our ablest men, best statesmen, and truest patriots have been those who have arisen from the humble ranks of society and made their way by the force of their talents, enlightened and guided by a good education. In a republic it will ever be found that ignorance is the germ of factions. Security rests in the intelligence of the mass, and where this intelligence is widely diffused it serves as a check upon the improper designs and unlicensed ambition of the few, who may be inclined to take advantage of their superior talents or attainments. Nothing can be done without moving the people, and where they understand the nature of their political rights, and the manner of exercising them for their own benefit, it is a difficult matter to enlist them in a cause of disorganization which they see must redound to their injury. Everybody can read the newspapers, and almost everybody does read them. All kinds of political topics are there discussed, and the people become acquainted with the principles of their institutions, the proceedings of their Legislatures and the entire machinery of the government. They watch strictly the conduct of every public officer, and hold in their hands the controlling power of elections. The surest road to success for any aspiring man is to convince the people by his conduct, that

he respects their rights and will maintain them, that he desires social order, and is true to the principles upon which it is founded. In this state of things it would be weak policy in a man of high education, who aims to advance himself in a political career, to seek by intrigue and violence what he can attain much more easily by frankness, honesty, and patriotism.

II. *“Is the whole town often consulted? What is the character of these assemblies? How can delicate affairs be transacted, and at the same time any uniform system of administration be followed? Do not these meetings become centres of intrigues, and are they not, like all other great assemblies, often influenced more by the passions than by argument?”*

The practice of town meetings has heretofore been explained. The people never assemble, except according to the laws and for a specific purpose. The object of the meeting is made known beforehand by a public notification. There are no delicate matters to transact. Everything is public, and every person is interested in what is to be done, and in the end the majority decides and the minority must submit. The laws, usages, and habits are the guides. If the majority acts against law, there is a remedy for the minority in the courts of justice. The common affairs of the town are seldom of a kind to excite the passions. It will undoubtedly sometimes happen, when some new enterprise is to be undertaken, that different interests will clash, and there will be warmth of debates in the meetings, and efforts of a party to carry particular points, but all must at last conform to the will of the majority. There has never been an instance in which the peace of the State was disturbed by the wrangling of towns. Besides any number of persons can petition the Legislature for redress when the case is not properly met by existing laws. The most valuable feature of the system is, that the rules of town governments are precisely the same throughout the State, so that the laws are

uniform, easily understood, and easily explained. This likewise preserves a uniformity in the habits, manners, and political views of the people. As before observed, the laws in regard to towns have not been made for producing new organizations, but rather to define and confirm ancient and long established customs.

12. *“Is it not found that the poor have a secret envy of the rich, so that the former class, always the majority, will sometimes oppress the latter, and exclude them in elections from public affairs?”*

Human nature is the same here as in other countries, and of course similar passions will exist, and produce similar effects to a certain extent. But these will everywhere be modified by the condition of society. In New England the number of the class that may be called rich is exceedingly small, except in the cities and large commercial towns. Almost every inhabitant owns the farm in fee simple upon which he lives. The system of tenantry and rents hardly exists, and the law of entails is unknown. Hence there can be no rich families, and nearly all the richest men in the country have arisen from small beginnings and made their own fortunes. That is, the rich have once been poor, and although wealth gives them influence, it seldom excites jealousy. Besides, wealth procures no political privileges and no exemption from the duties of a citizen. Every man, however large his property, must contribute his due share to the support of government. The rich man's vote is the same as the poor man's. The man of small property, whose talents and attainments are of a superior order, will commonly be preferred in elections to the rich man, yet the mere circumstances of wealth, if all other qualifications are equal, will operate but little in excluding a man from an office. Character, ability and fidelity in discharging the duties of an office are the principal recommendations, and where these are found combined with wealth they will have their weight. On the other hand, the voters in all the elections are so



numerous that it would not be possible for any man, however rich, to decide an election by means of his wealth.

13. "*What are Counties and Districts ?*"

A county is a territory which embraces a certain number of towns situated in contact with each other. The inhabitants never assemble in meetings as in the towns. The functions of county officers relate to such objects as pertain to all the towns, but such as are not discharged by any town officers. Each county contains a court house, jail, sheriff, coroners, probate of wills, recorder of wills, and county commissioners. All these officers are appointed by the Governor and Council. Justices of the peace are also county officers, and appointed in the same way. In whatever town any of these officers may reside, their authority extends over the whole county. Their duties are defined by law, and depend in no manner on the people. The higher courts of the commonwealth are held at stated times in the counties.

A District is a nominal division of territory merely for electing representatives to Congress and the State Legislature, and varies from time to time as the population increases, and as the legislature may decide. A town is a district for choosing Representatives to the Legislature; a county is a district for Senators; and, for members of Congress, the State is divided into as many districts as there are members sent from the State. The principle of this system is, that each part of the State shall be represented as nearly as possible in the ratio of the number of inhabitants in that part, and also that the representatives shall be taken from among the people by whom they are chosen.

III.

CONTINUED CORRESPONDENCE.

When Tocqueville's "*Démocratie en Amérique*" was published, Mr. Sparks endeavored to secure its translation and reproduction in this country. Correspondence upon this subject is preserved among the Sparks papers now in

the Library of Harvard University. On the 6th of June, 1837, after a letter from Tocqueville, Mr. Sparks wrote: "I am vexed and mortified that an edition of your "*Démocratie*" has not yet been published in America. The causes might be explained, but I can only hint at them in this letter. The work came out just at the time of the unfortunate "Indemnity Controversy," and then General Jackson's war spirit began to stir up in the people a hostile feeling towards France. Hence little interest was felt for a book by a French writer. Again, our newspapers have been filled with extracts from the English reviews, containing the parts of your work most objectionable to American readers; that is, your remarks on the defects of Democratic institutions. But you may be assured that all the intelligent persons among us who have read your treatise have applauded its ability and candor. I have pressed several publishing houses to republish the English translation. Three months ago I had nearly completed an arrangement with a house in Boston, and almost consented to write a preface and notes suited to American readers, but at that moment an advertisement appeared in the newspapers by a publisher in New York, announcing that he should immediately put it to press. I have heard nothing about it since, and I presume the terrible commercial disasters, which have prostrated all enterprise, have suspended, if not defeated, the execution of his design.

"As to your new work, I will enquire of the publishers, and ascertain what can be done. From my knowledge of their habits of doing business, however, I cannot hope that they will undertake it on such terms as to afford you any pecuniary compensation. The reason is that a foreign author cannot secure a copyright in the United States, and the publishers pay no respect to each other, but republish cheaper editions, and thus mar the sale and diminish the profits of the first edition. In this state of things, no publisher will venture to pay money for a foreign book, the success of which can only be proved by the trial.

"At all events, I wish you to send me the proofs of your work as fast as they are printed, and I will do the best that I can. Should it be printed here I will take care that it shall be put into the hands of a good translator, and that the book shall be brought before the public in a respectable form. The manuscript can be sent for your revision. Let me know whether you give me full discretion to act in the matter. You will hear from me again soon. Pray inform me whether the English translation of your '*Démocratie*' is a good one, and was revised by yourself. Direct to me at Cambridge, Massachusetts, where I am at present residing."

TOCQUEVILLE TO SPARKS.

PARIS, ce 11 Septembre, 1835.

Mon cher Monsieur Sparks—En revenant à Paris, il y a quelques jours, j'ai reçu une très aimable lettre de vous et un livre fort intéressant que vous aviez bien voulu y joindre. Vous devez trouver fort étrange que je n'aie pas répondu plus tôt à la première et remercié du second. Vous me pardonnerez, j'espère, mon silence en apprenant que je viens de passer cinq mois en Angleterre. Le paquet que vous m'avez adressé est parvenu pendant ce tems à ma demeure à Paris et ne m'a été remis qu'au retour.

Je suis très curieux de savoir ce que vous avez pensé du livre que j'ai publié sur la Démocratie Américaine. Les critiques me sont toujours très précieuses, mais elles ont un prix particulier à mes yeux lorsque'elles viennent d'un homme aussi éclairé que vous et que j'aime à compter au nombre de mes amis. Je vous serais donc infiniment obligé d'examiner avec soin cet ouvrage, de relever les erreurs qu'il peut contenir et me les signaler sans pitié. Ce serait me rendre un service d'autant plus grand que je vais bientôt procéder à une revision générale. Le livre a déjà eu deux éditions. On en prépare une troisième et pour celle-ci je serais très heureux de pouvoir profiter de votre expérience.

Je n'ai pas entendu dire que cet ouvrage ait été traduit ni même revu en Amérique. Il a été l'un et l'autre en Angleterre.

Pendant mon séjour à Londres, j'ai été reçu avec beaucoup de bienveillance dans la maison de Lord Holland. Causant avec lui, il m'est arrivé de citer votre nom et Lord Holland, m'interrompant, m'a fait un grand éloge de vous. Il prétend vous avoir fourni sur la Révolution d'Amérique des documens curieux que vous avez mis en lumière. C'est avec un très grand plaisir, je vous assure, que je lui ai entendu dire de vous tout le bien que j'en pense.

J'ai rencontré à Dublin un de nos amis de Boston Mr. Ticknor. Nous avons encore beaucoup parlé de vous et de tous ceux qui m'ont témoigné tant de bienveillance dans votre pays. Je ne leur ai fait qu'un reproche, c'est d'habiter si loin de nous.

Adieu, Monsieur Sparks, recevez, je vous prie, l'assurance de ma considération la plus distinguée.

P. S.—Je vais vous faire passer un exemplaire de mon ouvrage. J'espère que vous voudrez bien le recevoir comme un nouveau gage de mon amitié.

TOCQUEVILLE TO SPARKS.

PARIS, 14 January, 1837.

Mon cher Monsieur Sparks.—Un des mes amis s'occupe en ce moment à traduire la vie de Gouverneur Morris et il s'est adressé à moi pour vous faire parvenir la prière suivante : on trouve dans votre ouvrage sept à huit lettres de français célèbres tels que Lafayette, Mme. de Stael . . . que vous avez dû traduire en anglais. Vous sentez que cette correspondance serait de nature à intéresser particulièrement notre public et qu'il serait bien important de pouvoir lui donner non la traduction de votre traduction, mais les textes originaux. Si donc vous pouviez, sans vous gêner, faire copier les lettres en question ou tout au moins les principales d'entre elles, vous rendriez un grand service à mon ami et vous me feriez un véritable plaisir.

Je passe maintenant, si vous le voulez bien, à une autre affaire: vous savez peut-être que dans ce moment je travaille à compléter mon grand ouvrage sur l'Amérique en montrant l'influence de l'égalité des conditions sur les mœurs. Cette seconde partie du livre formera deux volumes comme la première et sera livrée à l'impression vers le mois de décembre prochain. Pensez-vous qu'un libraire Américain pourrait trouver son intérêt à faire faire la traduction de ces deux volumes et que, dans ce cas, il ne lui importerait pas de recevoir les *épreuves* à mesure qu'elles auraient été corrigées par moi? De cette manière sa traduction paraîtrait en Amérique presqu'aussitôt que l'original en Europe et il n'y aurait pas de concurrence à craindre. J'ai pensé, mon cher Monsieur Sparks, que vous ne refuseriez pas de consulter quelques libraries des États-Unis à ce sujet et que vous auriez l'obligeance de me faire connaître leurs conditions, s'ils avaient à m'en proposer.

Vous pardonneriez, j'espère, la double demande que contient cette lettre, à un homme qui ne peut s'empêcher de compter un peu sur votre amitié, parce qu'il vous en conserve lui-même une très véritable.

Recevez, je vous prie, mon cher Monsieur Sparks, l'assurance de ma considération la plus distinguée.

Mr. Sparks caused a translation to be made of Tocqueville's excellent report on the emancipation of slaves<sup>1</sup> in the French Islands, and it was published in the *North American Review*, circa July, 1840. Sparks thus rendered considerable practical service to Tocqueville in promoting his interests in America; and, on the other hand, Tocqueville aided Sparks in procuring original French materials for American history. Tocqueville also arranged for a French translation of Sparks' edition of the "Life and Correspondence

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<sup>1</sup> De Tocqueville's studies of the abolition movement in Europe and in the Indies are too little known in America. See his *Études Économiques et Littéraires*: "De l'émancipation des esclaves." See also his *Ancien Régime*, on the "Date de l'abolition du servage en Allemagne."



of Gouverneur Morris." In one of his letters upon this work to Tocqueville, June 6, 1837, Sparks expresses great regret that certain extracts from the diary of Morris had given offense, according to James Fenimore Cooper's report to the family of Lafayette: "It gives me pain to know that anything has passed through my hands to the public which should wound the sensibility of any person interested in the fair fame of that distinguished friend to America and the human race. Whatever Europeans may think, you are well aware that every American cherishes and ever will cherish an ardent affection for the name and the character of Lafayette. I hope nothing will appear in the work (the French edition) therefore, which shall tend in the least degree to his disparagement. It will be allowable for the translator to make omissions where he chooses." As is well known, Mr. Sparks had his own views upon the subject of editorial duty to the living as well as to the dead. It is unnecessary to apologize for him or for his methods. Posterity will do a just man justice.

#### SPARKS ON TOCQUEVILLE.

Mr. Sparks himself, while very friendly to Tocqueville, did not hesitate to criticise his somewhat doctrinaire views of American politics. Writing, February 1, 1841, to Major Poussin, of Paris, author of a book on the government and institutions of the United States, Mr. Sparks said: "Your criticisms on M. de Tocqueville's work also accord for the most part with my own sentiments. Notwithstanding the great ability with which his book is written, the extent of his intelligence, and his profound discussions of many important topics, I am persuaded that his theories, particularly when applied to the United States, sometimes lead him astray.

"For instance, in what he says of the tyranny of the majority, I think he is entirely mistaken. His ideas are not verified by experience. The tyranny of the majority, if exercised at all, must be in the making of laws; and any evil

arising from this source operates in precisely the same manner on the majority itself as on the minority. Besides, if the majority passes an oppressive law, or a law which the people generally disapprove, this majority will certainly be changed at the next election, and be composed of different elements. M. de Tocqueville's theory can only be true where the majority is an unchangeable body and where it acts exclusively on the minority, as distinct from itself,—a state of things which can never occur where the elections are frequent and every man has a voice in choosing the legislators."

In a letter to Professor William Smyth, of Cambridge, England, October 13, 1841, Mr. Sparks criticises the former's lectures on "America," for this reason: "I think too much confidence is placed in M. de Tocqueville's ideas of the 'tyranny of the majority.' On this subject his imagination leads him far astray. In practice we perceive no such consequences as he supposes. If the majority were large and always consisted of the same individuals, such a thing might be possible; but with us, as in all free governments, parties are nearly equal, and the elections are so frequent that a man who is in the majority at one time is likely to find himself in the minority a few months afterwards. What inducement has a majority thus constituted to be oppressive? Moreover, M. de Tocqueville often confounds the majority with public opinion, which has the same tendency, or nearly so, in all civilized countries, whatever may be the form of government. Yet his work has great merit, and on most points is remarkably accurate where facts only are concerned. He is apt to theorize."

#### SPARKS TO TOCQUEVILLE.

The following letter to Alexis de Tocqueville was written by Mr. Sparks from Cambridge, June 13, 1853, when he was president of Harvard College, and relates to the progress and certain dangerous tendencies of democracy in America:

"I have delayed too long to answer the kind letter which accompanied your official communication acknowledging the receipt of the diploma from our university. The sentiments expressed by you on the occasion were gratifying to the corporation, as showing an interest in the institution and good wishes for its continued prosperity.

"Through the usual channels of intelligence, you are so well informed of the general state of affairs in this country, that any remarks from me with the view of enlarging your knowledge or enlightening your opinions, might seem superfluous. Your own observation and experience have made you familiar with the principles upon which our political system is founded and with many of the details of its operation. Yet there have been changes in twenty years; and indeed it would not be wise to predict with any degree of precision what developments time may bring to pass.

"The material prosperity of the country goes onward with an amazing acceleration. The rapid growth of cities, towns, and villages, the expansion of commerce, the increasing products of agriculture, the multiplication of railroads forming a network from the eastern extremity of Maine to the Mississippi, and of steamboats floating on all the navigable rivers and lakes, the vast increase of manufactures of every description—all these present a scene of rapid change, activity, enterprise and progress which certainly has no parallel in the history of civilization. Nor is mental culture neglected. The school system of New England, modified as local circumstances may require, is established in nearly all the free States, patronized by the governments and sustained by the people. Higher seminaries and colleges are well supported. But it must doubtless be a long time, in the midst of so many temptations to active and political life, before there will be a large class who will seek eminence by triumphs in literature or purely intellectual achievements.

"Your apprehensions of the tendencies of the popular mind are not without foundation. The history of the last few years, the acquisitions of Texas and California, prove

that a spirit of adventure and conquest excites the aspirations and moves the will of the people. Perhaps it is inherent in the democratic element. The clamor for acquiring Cuba springs from the same spirit; and a slight cause would carry the arms of the United States again into Mexico. Where will this end and how are such vast accessions and discordant materials to be held together in a confederated republic? But the slave question presents the most formidable problem. How is this to be solved? No political geometer has yet devised a method. You know the extreme difficulties attending this question, as connected both with the form and extent of slavery as it exists in this country. Its political aspects are dark and ominous.

"There is not the slightest reason to fear that the United States will meddle with the agitations of Europe. The experiment tried by Kossuth proved a total failure. The people were ready enough to *sympathize*, but not a voice was raised for action, unless from a few German emigrants and restless agitators.

"When you again see Mr. Beaumont, please to present to him my kind remembrances.

"Accept, my dear sir, the assurance of the sincere regards and friendship of

"Yours most truly, JARED SPARKS."

The final letter to Tocqueville from Mr. Sparks was dated at Cambridge, December 28, 1858, and relates to De Tocqueville's greatest work, "*L'Ancien Régime*," and also to the problem of American slavery: "On my return from Europe, I received from Mr. Ticknor the letter and the volume which you sent to me by him from Paris. For these tokens of your friendship and kindness I beg you will accept my best thanks. I have perused your work with very great satisfaction not only as containing a rich fund of historical facts, but as presenting a clear and vivid picture of the internal state of France during the important period which it embraces. I have nowhere seen the causes and gradual

progress of the revolution so completely developed. The work throughout bears evidence of great labor and research in collecting the materials of which it is formed, and it must ever be regarded as a most valuable acquisition to the historical literature of France. In my library it will stand by the side of the "*Démocratie en Amérique*," and together they will serve as a perpetual and agreeable memorial of their author.

"What can I say to you concerning the state of public affairs in this country? No man understands better than yourself the principles and practical operations of our political system. No essential change has taken place since you were in America. There is a constant conflict of parties, but so it will always be in a free government. The rapid extension of settlements at the West and the addition of new States in that quarter, produce gradual changes in our internal affairs, yet no material inconveniences have been found to result from these acquisitions, although new States are now forming on the Pacific Ocean nearly four thousand miles from the Capital at Washington.

"Slavery is the absorbing topic which occupies all minds. It is indeed most formidable, whether regarded as bearing on the present or future prospects of the country. Emancipation is the hope and the ardent desire of every friend of humanity, but how or when this is to be effected no one can venture to predict. And even if all the slaves were now emancipated, what could be done with three millions of people, differing in race, color, and condition from those around them constituting the mass of the nation? The tendency of the evil, as it now exists, is to produce a geographical division in the opinions and interests of different States. Such a division must always be unfavorable to the Union. As yet, however, there are no serious apprehensions of difficulty from this source. The future must be left to the guidance of a wise and beneficent Providence."



## SPARKS TO COUNT DE MENOU.

Writing to the Count de Menou of Paris, May 23, 1859, after the death of De Tocqueville, Mr. Sparks said: "Your letter of May 6 has just come to hand. I have also received your favor of April 21, enclosing a copy of your very kind note to M. Guizot and his answer, and also a copy of the letter concerning our departed friend, M. de Tocqueville. For all these I beg you will accept my grateful acknowledgments and cordial thanks.

"The death of M. de Tocqueville has affected me very deeply. I knew him intimately during his travels in this country, and a friendly intercourse has existed between us ever since that time. He was not only an able and profound writer, but an estimable man. His death will be lamented by his friends everywhere.

"I duly estimate, my dear Count, the lively interest you have taken in regard to the membership of the Academy. Such an event would unquestionably be most gratifying to me. As the suggestion first came from yourself, it is not surprising, perhaps, that you should wish to see it carried into effect. But I fear you are taking much more trouble in the business than the occasion will justify, and I trust you will not allow yourself to have the least uneasiness on my account if your efforts should not be successful. I cannot doubt M. Guizot's kind intentions and friendly aid, yet other candidates will probably be brought forward, and the election of a member to fill the vacancy may depend on contingencies which cannot now be anticipated or foreseen. I shall not, however, feel the less grateful to you and M. Guizot for your generous dispositions in my behalf. I have not mentioned the subject to any person.

"I think it not advisable to make any further application at present for public documents. My former researches in the offices under M. Guizot's auspices, supplied me with a large number that are valuable; and although other important papers might be found, yet the history may be made

tolerably complete with such as I already have in my possession. Therefore, considering the kind of regulations now adopted in the archives, I should deem it inexpedient to renew application at this time.

“A copy of M. Gerard’s correspondence while he was minister in the United States, during the years 1778 and 1779, would doubtless contribute valuable historical materials. You have seen this correspondence among the papers of the French embassy at Washington.

“I will make further inquiry about the original letter from D’Aulnay, which you mention. I have very little hope of procuring it, because it is among the State papers, and it is probable that none of the officers who have the charge of those papers will feel authorized to allow it to be taken away.

“I shall be very glad to receive a copy of your family memoir when printed. I have sent to you a small parcel containing two or three pamphlets. It will be conveyed to you by the Rev. Dr. Frothingham, of Boston, who will sail shortly with his family from New York for Havre, on his way to Paris. . . . .”



# INDEX TO THE SIXTEENTH VOLUME

OF

## JOHNS HOPKINS UNIVERSITY STUDIES

IN

### HISTORICAL AND POLITICAL SCIENCE.

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